TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 302

DISTRICT OF COLUMBIA, PETITIONER,

vs.

GERALDINE LITTLE, ALIAS MILDRED PARKER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 31, 1949.

CERTIORARI GRANTED NOVEMBER 7, 1949.

SUPREME COURT OF THE UNITED STATES

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INDEX

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[fol. 1]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, APRIL TERM, 1949

No. 10092

DISTRICT OF COLUMBIA, Appellant,

v.

GERALDINE LITTLE, Alias Mildred Parker, Appellee

On Appeal from the Municipal Court of Appeals for the District of Columbia

Before Prettyman and Proctor, JJ., and Alexander Holtzoff, District Judge, Sitting by Designation

Joint Appendix

[fols. 2-3] IN THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA, CRIMINAL DIVISION, JULY TERM, A. D. 1947

INFORMATION

THE DISTRICT OF COLUMBIA, ss:

Vernon E. West, Esq., Corporation Counsel, by Richard W. Barton, Assistant Corporation Counsel, who for the District of Columbia prosecutes in this behalf in his proper person, comes here into Court, and causes the Court to be informed, and complains that Geraldine Little alias Mildred Parker late of the District of Columbia aforesaid, on the 9th day of * August and divers other days between that date and the date of the filing of this information in the

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* During argument in the Municipal Court of Appeals it was stipulated by counsel for the respective parties that the trial prosecutor moved at trial to amend the information to allege that the offense occurred on September 9th rather than August 9th, and that said motion was granted without opposition, but, by inadvertence, the record on appeal did not show the amendment.

year A. D. nineteen hundred and forty-seven, in the District of Columbia aforesaid, and on premises 1315—10th Street, northwest, did therein hinder, obstruct, and interfere with an inspector of the Health Department in the performance of his duty in carrying out the provisions of an Act of Congress the Health Regulations Contrary to and in violation of an Ordinance Act of Congress Health Regulations in such case made and provided and constituting a law of the District of Columbia.

Vernon E. West, Corporation Counsel.

[fol. 4] Personally appeared C. Abney this 10th day of September, A. D., 1947 and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

(Signed) R. W. Barton, Assistant Corporation Counsel in and for the District of Columbia.

Nov. 3, 1947. Plea Not Guilty. All testimony heard. Both parties given to 11/7/47 to present authorities. FG JPMcM.

Apr. 10, 1948. ME O'Connor, $25.00 or 10 days. Deft. notes intention of applying to Municipal Court of Appeals for an allowance of Appeal. Appeal bond set at $100.00. FG JPMcM.

IN THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA, CRIMINAL DIVISION

No. 38580

DISTRICT OF COLUMBIA

v.

GERALDINE LITTLE, Alias Mildred Parker

MEMORANDUM OPINION

The Health Regulation under which the prosecution is brought is as follows:

[fol. 5] "• • • • • • •

"(2) It shall be the duty of every person occupying any premises, or any part of any premises in the Dis-

trict of Columbia, or, if such premises be not occupied, of the owner thereof, to keep such premises or part, * * *, clean and wholesome. If upon inspection by the Health Officer or an inspector of the Health Department, it be determined that any such part thereof, or any building, yard, * * * is not in such condition as herein required, the occupant or occupants of such premises or part, or the owner thereof, as herein-fore specified, shall be notified and required to place same in a clean and wholesome condition; and in case any person shall fail or neglect to place said premises or part in such condition within the time allowed by said notice, he shall be liable to the penalties hereinafter provided."

* * * * * * *

"(10) That the Health Officer shall examine or cause to be examined any building supposed or reported to be in an unsanitary condition, and make a record of such examination; * * *."

* * * * * * *

"(12) That any person violating or aiding or abetting in violating, any of the provisions of these regulations, or interfering with or preventing any inspection authorized thereby, shall be deemed guilty of a misdemeanor, and shall, upon conviction in the Police Court, be punished by a fine of not less than $5.00 nor more than $45."

The charge against the defendant is that on the 9th day of August, 1947, and on premises 1315 10th Street, N. W., she did hinder, obstruct and interfere with an Inspector of the Health Department in the performance of his duties.

The contention of the defendant, through her attorney, [fol. 6] is that the Commissioners are without authority to pass said regulation; that said regulation is unreasonable and void; that the premises were the private dwelling of the defendant and that an entry or attempted entry of said premises over the objection of the defendant was an unlawful act and an invasion of her right of privacy and was a violation of her constitutional rights.

In *Dupont* v. *District of Columbia*, 20 App. 478, 488, the Court said:

> "Garbage, as we have seen, is necessarily composed largely of matter noisome even before its deposit in receptacles provided for it, and other matter mingled with it must necessarily partake of its offensive character. Moreover, it is a thing of almost hourly accumulation in every occupied house of a large city, and is therefore a constant menace to the health and comfort of thousands of people."

In *California Reduction Company* v. *Sanitary Reduction Works*, 199 U. S. 306, 318, the Supreme Court said:

> "In determining the validity of the ordinances in question it may be taken as firmly established in the jurisprudence of this court that the States possess, because they have never surrendered, the power—and therefore municipal bodies, under legislative sanction, may exercise the power—to prescribe such regulations as may be reasonable, necessary and appropriate, for the protection of the public health and comfort; and that no person has an absolute right 'to be at all times and in all circumstances wholly freed from restraint;' but 'persons and property are subject to all kinds of restraints; and burdens, in order to secure the general comfort, health, and general prosperity of the State'—the public, as represented by its constituted authorities, taking care always that no regulation, although adopted [fol. 7] for those ends shall violate rights secured by the fundamental laws nor interfere with the enjoyment of individual rights beyond the necessities of the case. Equally well settled is the principle that if a regulation, enacted by competent public authority avowedly for the protection of the public health, has a real, substantial relation to that object, the Courts will not strike it down upon grounds merely of public policy or expediency. * * * In the recent case of Dobbins v. Los Angeles, 195 U. S. 223, 235, this Court said that 'every intendment is to be made in favor of the lawfulness of the exercise of municipal power making regulations to promote the public health and safety, and that it is not the province of the courts, except in clear cases, to interfere with the exercise of the power reposed by

law in municipal corporations for the protection of local rights and the health and welfare of the people in the community.' "

The Court at page 321 further said:

"It is the duty, primarily, of a person on whose premises are garbage and refuse material to see to it, by proper diligence, that no nuisance arises therefrom which endangers the public health. The householder may be compelled to submit even to an inspection of his premises, at his own expense, and forbidden to keep them or allow them to be kept in such condition as to create disease. He may, therefore, have been required, at his own expense, to make, from time to time, such disposition of obnoxious substances originating on the premises occupied by him as would be necessary in order to guard the public health."

Wherefore, I conclude that the Commissioners were vested with authority to enact said regulation; that the regulation in question is necessary and proper for the protection of the public health and comfort and is not in violation of any constitutional rights of the defendant, and [fol. 8] I accordingly hold that under the facts the defendant is guilty of a violation of Section 12 of the Regulations.

John P. McMahon, Trial Judge.

April 10, 1948.

IN THE MUNICIPAL COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

(For use only where penalty imposed is less than $50)

GERALDINE LITTLE, alias Mildren Parker, Applicant,
1315 10th Street, N. W., Washington, D. C.

v.

DISTRICT OF COLUMBIA, Respondent, Washington, D. C.

APPLICATION FOR ALLOWANCE OF APPEAL FROM THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA, CRIMINAL DIVISION

1. Applicant, being aggrieved by the judgment (order) (sentence) entered on the 10th day of April, 1948, in The Municipal Court for the District of Columbia, Criminal Di-

vision, in case No. .... (Municipal Court Docket), entitled District of Columbia v. Geraldine Little, alias Mildred Parker, hereby applies for the allowance of an appeal therefrom to The Municipal Court of Appeals for the District of Columbia.

2. The offense charged is set forth in the attached copy of information. (If Applicant was tried on more than one [fol. 9] charge, a separate application should be filed as to each offense for which allowance of appeal is sought.)

3. Trial was had—without a jury.

4. The Applicant was found guilty and the penalty imposed was $25.00 fine or 10 days in jail.

5. The grounds for this appeal are: (The grounds should be stated as simply and as specifically as possible)

The proof showed that 1015 10th Street, N. W., was the private residence of Geraldine Little and was occupied and used only as a private residence. On the afternoon in question one C. Abney dressed in a uniform of the D. C. Health Department appeared at said residence, accompanied by M. A. Dixon a police officer and demanded admission. A party who did not live there came out of the house but refused to admit the Health Officer. Defendant, Geraldine Little, shortly thereafter came across the street and approached her home, 1315 10th Street, N. W., when said C. Abney told her he was from the Health Department; that he was from the Health Department, that her place had been reported to be in an unsanitary condition and he wanted to inspect it. He had no search warrant or other warrant, neither had the policeman, Dixon, who was with him. No notice had been given the defendant prior to that time that the Health Officer would be there to inspect her home for any reason, or that her home had been reported to be in an unsanitary condition. Mrs. Little told the said C. Abney and M. A. Dixon that 1315 10th Street, N. W., was her private home; that she had some Constitutional rights to protect her home, and refused to unlock the door and permit entry. She and the other party who had refused them entry were thereupon arrested in front of the house "for interfering with a Health Officer." They were carried to a call box by the policeman and detained until a Police patrol wagon came when they were put into the patrol wagon and driven to No. 2 police precinct where they [fol. 10] were detained until they posted collateral in the sum of $25.00 each some time later. Mrs. Little was form-

ally charged the next day in a complaint with "interfering with a Health Officer" on the facts above stated.

The cause came on for trial by the Court without a jury. At the close of all the testimony defendant, through counsel, moved the Court to find the defendant not guilty because:

"1. The proof shows that the place the Health Officer was seeking to enter and inspect was a private dwelling house and there was no proof that there was an infectious or any other disease therein and that there was no condition therein which could in any way effect the public health."

"2. That an invasion and entry of said private dwelling house by the Health Inspector, over the objection of defendant, the occupant, was an illegal act and an invasion of defendant's Constitutional rights."

"3. That the entry of said Health Officer, over the objection of defendant, was an unlawful act and an invasion of her rights of privacy."

"4. That any Ordinance of the District of Columbia which sought to give the Health Inspector a right to enter the private dwelling house of defendant, without a warrant, writ, or other legal authority, and without notice to defendant was beyond the authority of the Commissioner of the District of Columbia to enact, and beyond the power granted the District by Congress."

"5. That any attempt by Congress to give the District of Columbia power to enact an Ordinance to give the Health Inspector such authority was un-Constitutional and an invasion of defendant's Constitutional rights."

At the close of the oral argument the Court asked counsel, pro and con, to file briefs. This was done and defendant reiterated in writing and argued in said brief the points set out above. The Act of Congress on which the Ordinance was founded, (52 Cong. Sec. 1, Res. 4-7, and Act of Congress referred to therein—Jan. 26, 1887, Ch. 45, U. S. at Large, [fol. 11] Vol. 24, p. 565 were set out in full—Feb. 26, 1892) were set out in full to show no authority, as to private dwellings for entry under Ordinance of April 25, 1897, amended to July 28, 1922, and for no authority of the Health Department to enact regulations entitling Inspectors to enter private dwellings without warrant or other court authority.

On April 10, 1948, the Court, by written Memorandum filed, disallowed defendant's motion, and found her guilty. In this the Court Erred for the reasons above stated.

Jeff Busby, Applicant, or Attorney for Applicant, 900 F Street, N. W. Address.

Subscribed and sworn to before me by —— this 14 day of April, 1948. Wm. A. Norgren, Clerk.

IN THE MUNICIPAL COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Criminal No. 38580

[Title omitted]

SUPPLEMENTAL STATEMENT OF PROCEEDINGS AND EVIDENCE

The defendant came on for trial before me in the Criminal Division of the Municipal Court for the District of [fol. 12] Columbia on a charge that she did hinder, obstruct and interfere with an Inspector of the Health Department in the performance of his duties at premises 1315 10th Street, N. W.

The following evidence was produced on behalf of the District of Columbia.

C. Abney testified that he was an Inspector of the Health Department of the District of Columbia; that one Gilbert S. Cobb, an occupant in said premises, 1315 10th Street, N. W., personally appeared at the Health Department and made a complaint that there was an accumulation of loose and uncovered garbage and trash in the halls of said premises and that certain of the persons residing therein had failed to avail themselves of the toilet facilities; that upon the filing of said complaint, witness was ordered by the Health Officer to make an inspection of said premises; that in September, 1947 witness, dressed in the uniform of a Health Department Inspector, in company with Officer M. A. Dixon, a uniformed member of the Metropolitan Police Department, went to said premises where they found one William Allen about to enter said premises; that witness identified himself as an Inspector of the Health Department, stated the nature of his business, and asked permission of Allen to enter said premises for the purpose of making an inspection; that Allen refused to permit witness to enter, stating that the owner of the premises was not

at home; that during the discussion between witness and Allen, a woman, who at that time was unknown to witness or Officer Dixon, was standing across the street from the premises, and she called to Allen not to permit the Inspector to enter the premises; later, this woman came across the street and up to the porch of said premises, and continued to tell Allen not to permit the Inspector to enter said premises for the purpose of making an inspection; that Dixon, the Police Officer, asked the woman if she was the owner of the premises and upon her denying ownership of the premises, Officer Dixon instructed her to go about [fol. 13] her business; Allen was then informed that he was interfering with a Health Officer in the performance of his duties and was placed under arrest; that Allen was taken by Officer Dixon to the nearest Police Callbox; the unidentified woman followed along, protesting the right of the Health Inspector to enter the premises and finally identified herself as the owner of the premises and demanded that she also be arrested for interfering with a Health Officer in the performance of his duties; that the defendant seized Inspector Abney's arm and attempted to grab the papers he was holding in his hand; she was then arrested.

Officer M. A. Dixon, called on behalf of the District of Columbia, testified substantially the same as Inspector Abney.

On cross-examination Inspector Abney and Officer Dixon both testified they had no warrant or other process of court.

The District of Columbia thereupon announced its case as closed.

The defendant, as a witness in her own behalf, testified in substance as follows: That she came from across the street with a bundle of groceries in her hand and saw Inspector Abney and Officer Dixon in front of her door talking to William Allen; that she was asked if she lived at these premises and she replied that it was her private residence; that witnesses Abney and Dixon then demanded that she permit Inspector Abney to make an inspection of the premises; that she denied permission to them to enter said premises on the ground that her constitutional rights did not require her to submit to an inspection; that thereupon, after some discussion, the defendant and Allen were placed under arrest for interfering with a Health Inspector in the performance of his duties and taken to the nearest Patrol Box.

The defendant's 15 year old daughter, called as a witness on behalf of the defendant, testified in substance as follows: That she was in the upstairs part of the house, 1315 10th [fol. 14] Street, N. W., and she overheard a discussion taking place and was able from the sound to determine that it concerned "constitutional rights."

The defendant thereupon announced her case as closed.

The court thereupon adjudged the defendant guilty and imposed a fine of $25.00 and in default of the payment of the fine that she serve a term of 10 days.

John P. McMahon, Trial Judge.

November 30, 1948.

Jeff Busby, Esquire, 900 F Street, N. W., Atty. for Appellant. Edward A. Beard, Esquire, Asst. Corp. Counsel, Atty. for Appellee.

IN THE MUNICIPAL COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 697

GERALDINE LITTLE, alias Mildred Parker, Appellant,

v.

DISTRICT OF COLUMBIA, Appellee

Appeal from the Municipal Court for the District of Columbia, Criminal Division

(Reargued December 7, 1948. Decided December 22, 1948)

Jeff Busby for appellant.

Edward A. Beard, Assistant Corporation Counsel, with whom Vernon E. West, Corporation Counsel, and Chester H. Gray, Principal Assistant Corporation Counsel, were on the brief, for appellee.

[fol. 15] Before Cayton, Chief Judge, and Hood and Clagett, Associate Judges

OPINION

CLAGETT, Associate Judge:

Appellant, Geraldine Little, alias Mildred Parker, was charged with and convicted of hindering, obstructing and interfering with a health officer in the performance of his

duty in carrying out the provisions of local health regulations.

The account of the arrest given by the government witnesses was as follows: One of the occupants of a residential property belonging to appellant appeared at the Health Department and made a complaint that there was an accumulation of loose and uncovered garbage and trash in the halls of the house and that certain of the residents failed to avail themselves of the toilet facilities. Thereafter under orders of his superior a uniformed officer of the D. C. Public Health Department accompanied by a uniformed member of the Metropolitan Police went to the residence for the purpose of inspection.

The officers were met at the door by one Allen, who was about to enter the premises. The inspector identified himself, told of his mission and asked permission to inspect the house. Allen refused premission on the ground that the owner was not at home. Appellant, who was then unknown to the officers, was across the street and called to Allen not to permit the officers to enter. Appellant then crossed the street, came upon the porch of the premises, and, after she knew the object of the call, again told Allen not to permit the officers to enter. Appellant at first denied her ownership of the premises and was told to go about her business. Allen was arrested for interfering with a health officer, and taken to a nearby police call box followed by appellant protesting the right of entry. She finally identified herself as the owner of the house and demanded that she be arrested also. She seized the health officer's arm and attempted to grab some papers that he was holding. She was then arrested.

[fol. 16] Appellant's own account was substantially the same, except that she claimed she was arrested after denying the officers permission to enter the premises on the ground that her constitutional rights did not require her to submit to the inspection.

Several errors are alleged, but in substance they amount to the assertion that the actions of the health officer were an at-empt to carry out an unlawful search of a private dwelling in contravention of the Fourth Amendment to the United States Constitution, and hence that appellant could not be legally arrested for resisting.

The government insists that the case may be resolved without reference to the constitutional propriety of the at-

tempted entry. It is said that appellant's arrest was predicated upon her actions on a public street in interfering with the arrest of Allen. However, the information upon which appellant was convicted charged her with interfering with a health officer, not a police officer. Making arrests is not a part of the duties of a health officer. Furthermore, the case was not tried upon this theory. The trial judge's memorandum opinion deals only with the constitutional issue, and we believe that our decision also must turn upon it.

The police regulation which appellant was convicted of violating was promulgated by the District of Columbia commissioners April 22, 1897, pursuant to a joint resolution of Congress enacted February 26, 1892 (52 Cong., Sess. 1, Res. 1-7, 1892, entitled "Joint Resolutions to Regulate Licenses to Proprietors of Theaters in the City of Washington, District of Columbia, and for Other Purposes.") This joint resolution authorized the commissioners to make and enforce all such reasonable and usual police regulations as they might deem necessary for the protection of lives, limbs, health, comfort, and quiet of all persons and the protection of all property within the District of Columbia. The regulations adopted pursuant to this act provide in part, as follows:

[fol. 17] "2. That it shall be the duty of every person occupying any premises, or any part of any premises, in the District of Columbia, or if such premises be not occupied, of the owner thereof, to keep such premises or part, * * * clean and wholesome; if, upon inspection by the Health Officer * * * it be ascertained that any such premises, or any part thereof, or any building, * * * is not in such condition as herein required, the occupant or occupants of such premises or part, or the owner thereof, * * * shall be notified thereof and required to place the same in a clean and wholesome condition; and in case any person shall fail or neglect to place such premises or part in such condition within the time allowed by said notice he shall be liable to the penalties hereinafter provided.

"10. That the Health Officer shall examine or cause to be examined any building supposed or reported to be in an unsanitary condition * * *.

"12. That any person violating, or aiding or abetting in violating, any of the provisions of these regulations, or interfering with or preventing any inspection authorized thereby, shall be deemed guilty of a misdemeanor, and shall, upon conviction * * * be punished by a fine of not less than $5 nor more than $45."[1]

While *all buildings* are included within the scope of the regulation, and thus private dwellings are so included, it is of some significance that special mention is made of stores, workshops, tenements and lodging houses.

Generally health laws and ordinances are accorded liberal construction because their exercise is largely discretionary. However, when they appear to violate a constitutional right, the courts must carefully weigh the value of the end accomplished against the restriction suffered.[2] It is within the police power of municipal corporations to control and [fol. 18] regulate the manner of collection and disposition of garbage, refuse or filth,[3] but regulations of this kind must not unduly infringe upon individual rights.[4]

Generally public authorities may employ all necessary means to protect the public health and in so doing may provide for the inspection of premises as a health measure.[5] However, it is to be noted that the overwhelming majority of the cases sustaining this inspection power concern public or quasi-public places. It is clearly within the power of municipal authorities to provide for the inspection of hotels, places where food is served or stored and other public places.[6] The reason for this is patent: there is a prospect of immediate danger to the health of large segments of the public. But where a single private dwelling is concerned the "present danger" is a much more elusive thing. One

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[1] Amendment of July 28, 1922.

[2] 3 McQuillin, Municipal Corporation (2nd ed.) § 954.

[3] *Gardner* v. *Michigan*, 199 U. S. 325. See *Dupont* v. *District of Columbia*, 20 App. D. C. 477.

[4] *Consumers Co.* v. *City of Chicago*, 313 Ill. 408, 145 N. E. 114.

[5] 25 Am. Jur., Health § 28.

[6] *Hubbell* v. *Higgins*, 148 Iowa 36, 126 N. W. 914; *Keiper* v. *City of Louisville*, 152 Ky. 691, 154 S. W. 18.

authority distinguishes the power of inspection as it concerns private premises, pointing out that the constitutional aspect of inspection differs when it is extended to the interior of private houses, and that such inspection should require an affidavit, probable cause and judicial warrant.[7]

Unless the condition which is the object of inspection amounts to an immediate danger or a dangerous nuisance per se, it would appear that municipal authorities would be acting beyond their powers in taking any summary action.[8] Since sanitary or quarantine regulations and the like are promulgated by the community for its self-defense, they should not be carried beyond absolute necessity.[9] Most law-abiding householders gladly permit such inspections, especially where the officers are in uniform. But since the regulation itself provides for abatement of such a nuisance [fol. 19] only after notice and hearing, it would seem to follow that health officers can not inspect, when challenged, without the usual and ordinary preliminary steps for search. Nothing herein indicates such urgency or immediate danger as to approve the total waiver of these protections. An existing or threatened epidemic might establish a different case. One treatise on public health states that it is the duty of a health officer to make inspections. However, this authority goes on to say that if entry is refused the officers should obtain a warrant and effect entry by such legitimate means.[10] The same situation is apparent here. The regulation does not require an unconstitutional method of search. It may be carried out within the framework of the Constitution by obtaining a warrant. Hence we do not wish to be understood as saying that the regulation is unreasonable on its face. We express an opinion only as to its application under the present facts.

We believe that the conditions of this case did not warrant the action taken by the health officer. Neither summary abatement nor entry over objection can be justified

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[7] Freund, Police Power § 47. See *McDonald* v. *United States*, — U. S. —, *No. 36, decided Dec. 13, 1948.*

[8] See *North American Cold Storage Co.* v. *Chicago*, 211 U. S. 306; *Lawton* v. *Steele*, 152 U. S. 133.

[9] *Hannibal and St. Joseph R. R. Co.* v. *Husen*, 95 U. S. 465.

[10] Public Health and Safety, Parker & Worthington (1892) §§ 43, 144, 145.

under the circumstances. Therefore it must follow that the conviction can not be sustained.

Reversed.

[fols. 20-28] IN THE MUNICIPAL COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, OCTOBER TERM, 1948

No. 697

GERALDINE LITTLE, alias Mildred Parker, Appellant,

v.

DISTRICT OF COLUMBIA, Appellee

JUDGMENT

Appeal from the Municipal Court for the District of Columbia, Criminal Division. This cause came on to be heard on the transcript of the record from the Municipal Court for the District of Columbia and was re-argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Municipal Court in this cause, be and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said Municipal Court for further proceedings in accordance with the opinion of this Court.

Brice Clagett, Associate Judge.

December 22, 1948.

[fol. 29] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, APRIL TERM, 1949

Before Honorable E. Barrett Prettyman and James M. Proctor, Circuit Judges, and Alexander Holtzoff, District Judge, Sitting by Designation

No. 10,092

DISTRICT OF COLUMBIA, Appellant,

v.

GERALDINE LITTLE, Alias Mildred Parker, Appellee

MINUTE ENTRY—June 10, 1949

Argument commenced by Mr. Chester H. Gray, attorney for appellant, and concluded by Mr. Jeff Busby, attorney for appellee.

[fol. 30] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10092

DISTRICT OF COLUMBIA, Appellant,

v.

GERALDINE LITTLE, Alias Mildred Parker, Appellee

Appeal from the Municipal Court of Appeals for the District of Columbia

Argued June 10, 1949. Decided August 1, 1949

Mr. Chester H. Gray, Principal Assistant Corporation Counsel, D. C., with whom Mr. Vernon E. West, Corporation Counsel, D. C., and Mr. Edward A. Beard, Assistant Corporation Counsel, D. C., were on the brief, for appellant.

Mr. Jeff Busby, with whom Mr. Jeff Busby, Jr., was on the brief, for appellee.

Before Prettyman and Proctor, JJ., and Alexander Holtzoff, District Judge, Sitting by Designation

OPINION

PRETTYMAN, J.:

Appellee Little was convicted in the Municipal Court for the District of Columbia upon an information which

charged that on certain premises on a certain day she hindered, obstructed and interfered with an inspector of the Health Department in the performance of his duty. She appealed, and the Municipal Court of Appeals, in a unanimous opinion written by Associate Judge Clagett, reversed.[1] Because of the importance of the question to the enforcement of the health laws, we granted an appeal.

Appellee refused to unlock the front door of her home at the command of a Health Department inspector who was [fol. 31] without a warrant. The question is whether she was within her constitutional rights in doing so, or whether she thereby illegally hindered him in the performance of his duty.

The inspector testified that he was ordered by the Health Officer to make an inspection of the premises after a complaint had been made "that there was an accumulation of loose and uncovered garbage and trash in the halls of said premises and that certain of the persons residing therein had failed to avail themselves of the toilet facilities".[2] It is not disputed that the premises is a private residence, the home of the appellee; that the inspector had no warrant either of arrest or search; that the appellee refused to unlock the front door, and that she was thereupon arrested.

The District of Columbia says that the Health Officer is fully empowered by valid statutes to enforce the public health laws; that the Commissioners are likewise duly empowered to make all regulations necessary to protect the public health; that the regulations require owners and occupants of premises to maintain them in a clean and wholesome condition,[3] and that the same regulations authorize

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[1] *Little v. District of Columbia*, 62 A. 2d 874 (1948).

[2] The quoted description of the complaint is from the findings of the trial court.

[3] This regulation, in pertinent part, as found by the trial court, is:

"(2) It shall be the duty of every person occupying any premises, or any part of any premises in the District of Columbia, or, if such premises be not occupied, of the owner thereof, to keep such premises or part, * * *, clean and wholesome. If upon inspection by the Health Officer or an inspector of the Health Department, it be determined that any such part thereof, or any building, yard, * * * is not in

inspections and denominate as a misdemeanor interference with an inspection.

In respect of the Fourth Amendment, the District says that the attempted inspection was premised upon a complaint, which, if true, constituted probable cause to believe that a violation of law existed in the dwelling, and that the attempt was at a reasonable time of day by a uniformed officer who stated the purpose of his visit. It says that the view "expressed by the Municipal Court of Appeals is not consonant with the scope of the police power as indicated by the decisions of Courts controlling in this jurisdiction" and, further, that "it has been the view of the Congress, as shown by its statutory enactments limiting the right of inspection without warrant in certain specified activities under the police power, that it may unqualifiedly extend the [fol. 32] right of inspection without warrant in such circumstances as it may deem necessary, so long as the police power is reasonably exercised." It also says that

"Practical application of this holding [of the Municipal Court of Appeals] to the problems of enforcement of health laws in a large city would result in chaos. The whole purpose of the use of the police power by the health authorities is to prevent the creation of present and immediate dangers, to correct deficiencies before they become nuisances per se and before the public is endangered. While every authority recognizes the necessity for inspection, the effect of the Municipal Court of Appeals' opinion is to prevent it; for, if the danger is immediate and the nuisance apparent, the sovereign may protect the public by civil proceedings to

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such condition as herein required, the occupant or occupants of such premises or part, or the owner thereof, as hereinbefore specified, shall be notified and required to place same in a clean and wholesome condition; and in case any person shall fail or neglect to place said premises or part in such condition within the time allowed by said notice, he shall be liable to the penalties hereinafter provided.

* * * * * * *

"(10) That the Health Officer shall examine or cause to be examined any building supposed or reported to be in an unsanitary condition, and make a record of such examination; * * *."

abate it and by criminal prosecution of the guilty party—the necessity for inspection no longer exists."

The position of the District is summarized by it as follows:

"In the view of appellant a more salutary rationale insuring effective protection of the health and safety of the public, and at the same time cognizant of the personal rights of the individual under the Fourth Amendment, would be a holding that an inspection of a private dwelling in aid of the police power as it relates to matters of health is valid even though without warrant, provided there is probable cause to believe that there exists within the dwelling a violation of law or regulation designed to protect the health, safety or welfare of the public and provided the inspection is attempted under circumstances and conditions of fact which are not unreasonable."

As a separate consideration, the District also presents an argument based upon some conflict in the testimony as to whether appellee was arrested for hindering the health officer by refusing to unlock the door on the premises or was arrested for interfering with a police officer in the arrest of another person at a police call box some distance down the street. That argument has no bearing upon the case, because the information upon which appellee was convicted charged her with interfering with the health inspector, not the policeman, upon the premises, not upon the public street, and with hindering the performance of duty by the health inspector, not with interfering with a police officer in the performance of an arrest.

We must delimit the question before us. Many of the problems discussed in the District's brief are not in the case. The simple question is: Can a health officer of the District of Columbia inspect a private home without a warrant if the owner or occupant objects?

The Fourth Amendment to the Constitution applies.[4] The Supreme Court has several times in recent cases ex- [fol. 33] haustively and emphatically discussed the invasion

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[4] *Neild* v. *District of Columbia*, 71 App. D. C. 306, 110 F. 2d 246 (1940); *National Mutual Ins. Co. of D. C.* v. *Tidewater Transfer Co., Inc.*, 17 U. S. L. Week 4536 (U. S. June 20, 1949).

of private dwellings by government officers.[5] If there ever was any doubt upon the matter, it has surely now been laid to rest. The several opinions in those cases contain complete historical studies, relating to both federal and state governments, and many unequivocal declarations, quotable and unmistakable. We need not attempt to reproduce them here.

Democratic government has distinguishing features. One of them is freedom of speech for the individual; another is freedom of religion. Another is the right of privacy of a home from intrusion by government officials. These characteristics are not mere hallmarks. They are the beams and pillars about which the structure was built and upon which it depends. If private homes are opened to the intrusion of government enforcement officials, at the wish of those officials, without the intervening mind and hand of a magistrate, one prop of the structure of our system is gone and an outstanding characteristic of another form of government will have been substituted.

When the Constitution prohibits unreasonable searches, it of course, by implication, permits reasonable searches. But reasonableness without a warrant is adjudged solely by the extremity of the circumstances of the moment and not by any general characteristic of the officer or his mission. If an officer is pursuing a felon who runs into a house and hides, the officer may follow and arrest him. But this is because under the exigencies of circumstance the law of pursuit supersedes the rule as to search. There is no doctrine that search for garbage is reasonable while search for arms, stolen goods or gambling equipment is not. Moreover, except for the most urgent of necessities, the question of reasonableness is for a magistrate and not for the enforcement officer.[6]

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[5] *Agnello* v. *United States*, 269 U. S. 20, 70 L. Ed. 145, 46 S. Ct. 4 (1925); *Harris* v. *United States*, 331 U. S. 145, 91 L. Ed. 1399, 67 S. Ct. 1098 (1947); *Davis* v. *United States*, 328 U. S. 582, 90 L. Ed. 1453, 66 S. Ct. 1256 (1946); *Johnson* v. *United States*, 333 U. S. 10, 92 L. Ed. —, 68 S. Ct. 367 (1948); *McDonald* v. *United States*, 335 U. S. 451, 93 L. Ed. —, 69 S. Ct. 191 (1948); *Wolf* v. *Colorado*, 17 U. S. L. Week 4639 (June 27, 1949).

[6] *Johnson* v. *United States*, 333 U. S. 10, 13, 14, 92 L. Ed. —, 68 S. Ct. 367 (1948).

It is said to us that the regulations sought to be enforced by this search only incidentally involved criminal charges, that their purpose is to protect the public health. It is argued that the Fourth Amendment provision regarding searches is premised upon and limited by the Fifth Amendment provision regarding self-incrimination. It is said to us that therefore there is no prohibition against searches of private homes by government officers, unless they are searching for evidence of crime; that if they are searching for evidence of crime, they must get a search warrant, but that if they are searching for something else or are just [fol. 34] searching, they need not get a search warrant; for searchers of the latter sort, we are told, home owners must open their front doors upon demand of an officer without a warrant. The argument is wholly without merit, preposterous in fact. The basic premise of the prohibition against searches was not protection against self-incrimination; it was the common-law right of a man to privacy in his home, a right which is one of the indispensable ultimate essentials of our concept of civilization. It was firmly established in the common law as one of the bright features of the Anglo-Saxon contributions to human progress. It was not related to crime or to suspicion of crime. It belonged to all men, not merely to criminals, real or suspected. So much is clear from any examination of history, whether slight or exhaustive. The argument made to us has not the slightest basis in history. It has no greater justification in reason. To say that a man suspected of crime has a right to protection against search of his home without a warrant, but that a man not suspected of crime has no such protection, is a fantastic absurdity.

The argument involves a basic error in reasoning in respect to the Constitution's Bill of Rights. The Fourth Amendment did not confer a right upon the people. It was a precautionary statement of a lack of federal governmental power, coupled with a rigidly restricted permission to invade the existing right. The right guaranteed was a right already belonging to the people. The reason for the search warrant clause was that public interest required that personal privacy be invadable for the detection of crime, and the Amendment provided the sole and only permissible process by which the right of privacy could be invaded. To view the Amendment as a limitation upon an otherwise unlimited

right of search is to invert completely the true posture of rights and the limitations thereon.

Much of the argument of the District is devoted to establishing the public importance of the health laws. Assertions are also made of the beneficence and forbearance of health officers. We may assume both propositions. But the constitutional guarantee is not restricted to unimportant statutes and regulations or to malevolent and arrogant agents. Even for the most important laws and even for the wisest and most benign officials, a search warrant must be had.

We emphasize that no matter who the officer is or what his mission, a government official cannot invade a private home, unless (1) a magistrate has authorized him to do so or (2) an immediate major crisis in the performance of duty affords neither time nor opportunity to apply to a magistrate. This right of privacy is not conditioned upon the objective, the prerogative or the stature of the intruding officer. His uniform, badge, rank, and the bureau from [fol. 35] which he operates are immaterial. It is immaterial whether he is motivated by the highest public purpose or by the lowest personal spite.

To be certain that we have stated the rule no broader than existing law, one has only to read the cases cited *supra* in footnote 5; indeed, the opinions in *McDonald* v. *United States* alone are sufficient. *Morton* v. *United States*[7] and Section 3053 of Title 18 (new) of the United States Code are cited to support the proposition that an officer may enter any building if he has reasonable ground to believe that a person therein has committed a felony. Neither citation supports the proposition stated. The *Morton* case concerned the use of evidence seized in a search which was incidental to a lawful arrest for first degree murder. This court, in a careful opinion by Judge Justin Miller, recited the facts which demonstrated that the arrest was made and was lawful and that the officers were admitted without objection to the accused's quarters. Section 3053 of Title 18 of the United States Code makes neither mention of nor reference to searches. The historical fact is that the invasion of homes upon a suspicion on the part of a police officer alone, either that a felon was there or that a felony was being committed there, was one of the potent factors in the adoption of the

[7] 79 U. S. App. D. C. 329, 147 F. 2d 28 (1945).

prohibitory rule of the common law and in its recitation in the Fourth Amendment. That an officer merely suspects that a felon is in a house is a precise example of a situation in which a warrant is required, not of one in which a warrant need not be had.

The District lays great stress upon the fact that there was a complaint, succinct and definite. But, so far as we know, the existence of a complaint has never been held to be a basis for dispensing with a search warrant. Quite the contrary, the fact of a complaint shows (1) that there is an identifiable informant who could be taken before a magistrate; (2) that the enforcement officers have no direct or personal knowledge of the alleged offense; and (3) that in all reasonable probability a search warrant would be procurable. These are reasons for getting a warrant, not for failing to get one.

There is nothing about an accumulation of garbage or other matter deleterious to health which makes it difficult to obtain a warrant to search for it. It is as noticeable and as apt to complaint as are gaming equipment or stolen goods. Health officers may chafe at the inconvenience, but so do police officers.

Distinction between "inspection" and "search" of a home has no basis in semantics, in constitutional history, or in reason. "Inspect" means to look at, and "search" means [fol. 36] to look for. To say that the people, in requiring adoption of the Fourth Amendment, meant to restrict invasion of their homes if government officials were looking for something, but not to restrict it if the officials were merely looking, is to ascribe to the electorate of that day and to the several legislatures and the Congress a degree of irrationality not otherwise observable in their dealings with potential tyranny.

We need not go beyond the record in this case for an example of the extremity to which the doctrine of the appellant District would take us. One of the two complaints made by the unidentified informant was that some of the occupants of the house "failed to avail themselves of the toilet facilities". Reducing appellant's doctrine to practicalities, the result would be that if the owner of a house be reliably charged with concealing a cache of arms and munitions for purposes of revolution, police officers could not search without either permission or warrant, but if the information be that an occupant fails to avail himself of the toilet facilities,

government officials could enter and examine the house over protest and without a warrant. It may be that the boundary of the curtilage is no longer the outpost of man's domestic independence. It may be that a transom is debatable access. But even if the front door of the house is no longer protected by the Constitution, surely it had been thought until now that the bathroom door is.

The scope of appellant's doctrine is vivified by reference to the pertinent regulations. The occupant of any "part" of any "premises" is required to keep that part "clean and wholesome". To satisfy municipal officers that this mandate is met, the privacy of a home would be subjected to intrusion without restriction or limitation. Obviously, any such rule of law would wholly destroy that privacy. Under it, a home must be "clean and wholesome" in the judgment of municipal officials. By what standard and at what time of day is this perfection to be tested? And under what combination of domestic circumstances? Is the unassisted, overworked, overwrought mother of small uninhibited children to have less privacy to work out her family difficulties than the unencumbered bachelor in his serviced apartment? Is the evening radio hour to be at the whim of a zealous officer making bacteria counts on dinner dishes in the kitchen sink? Is the informality of a lone housewife doing the morning chores to be embarrassed by the unpreventable company of a benign, but nevertheless strange, searcher for the unclean and the unwholesome? These are extreme examples, perhaps, but they are no sillier than the precise words of the complaint in the present case, and we are dealing with doctrines and not with the presumable taste and sense of individual officials. Maybe none of these examples [fol. 37] would ever occur. But the question before us is not whether they would happen but whether they legally could.

In support of appellant's position, it is said that the purpose of the Fourth Amendment was to provide a remedy against general warrants, that general warrants had been sought only in criminal cases, and that the remedy should be construed as no broader than the evil. The reasoning gets a superficial plausibility from its curious substitution of incident for basic principle. It is true that the incident which gave rise to the furor in England and to the fears in this country was the invention of general warrants designed to accomplish an invasion of homes. And the adopters of

the Amendment certainly intended to forestall any such in this country. But even if the second clause of the Amendment had been a specific prohibition against general warrants (which it is not), to say that the specific prohibition of one threatened violation of a basic right thereby validates every other violation of that right is both illogical and unrealistic. The present Chief Justice of the United States, writing for this court in *Nueslein* v. *District of Columbia*[8] when he was an Associate Justice here, disposed of the argument here made. No other discussion of that phase of the contention is necessary.

We are told by the District that enactments by the Congress show an intention to permit invasion of homes without warrants. The Supreme Court said in *Agnello* v. *United States*,[9] "Congress has never passed an act purporting to authorize the search of a house without a warrant." And we find in Section 2236 of Title 18 of the United States Code, reenacted just a year ago, a crisp and emphatic indication of the attitude of the Congress upon the matter. That section provides:

"Whoever, being an officer, agent, or employee of the United States or any department or agency thereof, engaged in the enforcement of any law of the United States, searches any private dwelling used and occupied as such dwelling without a warrant directing such search, or maliciously and without reasonable cause searches any other building or property without a search warrant, shall be fined for a first offense not more than $1,000; and, for a subsequent offense, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

That statute does not apply to District of Columbia officials, but it clearly reflects the attitude of the Congress in respect to the matter. It seems unnecessary to add what is obvious to us, that any act of the Congress purporting to permit the invasion of homes by police officers without warrants, ex- [fol. 38] cept under the established exception of unavoidable crisis, would not only be politically lethal to its proponents but would be wholly void.

It is said in support of appellant's position that Congress has never enacted a statute providing for search warrants

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[8] 73 App. D. C. 85, 115 F. 2d 690 (1940).

[9] 269 U. S. 20, 32, 70 L. Ed. 145, 46 S. Ct. 4 (1925).

except for the enforcement of criminal laws. It is argued from that premise that Congress views the whole Fourth Amendment as limited to criminal cases. Precisely the opposite conclusion is obvious to our minds. The absence of statutory provisions for search warrants except in criminal cases demonstrates conclusively that Congress means that the right of privacy shall not be invaded except in criminal cases. Search warrants are a means of invading a privacy which otherwise is not invadable at all.

Support for appellant's position is offered in sentences taken from opinions in cases which concerned both a Fifth Amendment question of self-incrimination and a Fourth Amendment question of search. Evidence taken in an allegedly illegal search was used against the owner or possessor in a criminal case. Obviously, in such cases observations upon the interrelationship of the two Amendments is natural and proper. But in none of them is there the slightest intimation that the right to privacy protected by the Fourth Amendment is limited to persons or things involved in suspected crime. It is unnecessary to describe each case mentioned in this connection. They simply do not support the proposition advanced to us.

We have read all the other cases cited. None relates to the search of private dwellings. We need not discuss them at length. Some relate to seizures of goods in interstate commerce or pursuant to writs, some to production of goods or papers pursuant to governmental order, some to the validity of warrants or writs. *Hubbell* v. *Higgins*[10] dealt with the inspection of a hotel. It well illustrates the fallacy of the argument for which it is cited. Hotels are subject to government license, but no one has ever suggested that in this country a man could be required to have a license to have a home.

We hold that health officials without a warrant cannot invade a private home to inspect it to see that it is clean and wholesome, or to search for garbage upon a complaint that garbage is there, or to see whether the occupants have failed to avail themselves of the toilet facilities therein.

We do not reach the question whether a municipal regulation requiring private homes to be clean and wholesome, [fol. 39] and denominating as a misdemeanor a violation of the regulation, is valid. Of course, regulations, like

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[10] 148 Iowa 36, 126 N. W. 914 (1919).

laws, which protect the public health, prevent nuisances and the like, applicable by terms and practice to conditions impinging upon the public interest, are valid and enforceable. And so, too, are emergency measures necessary in the case of persons with communicable diseases who are at large and refuse to cooperate with restrictive measures;[11] or in the case of other sudden emergencies involving the public. But when such regulations or laws purport to give officers authority to enter private homes, against the occupants' protests, and without a warrant, when no compelling emergency involving public health is involved, a serious question of constitutional validity is raised. Health laws can be enforced in the same manner as are other laws. If an acute emergency occurs precluding reference to a court or magistrate, public officials must take such steps as are necessary to protect the public. But, absent such emergency, health laws are enforced by the police power and are subject to the same constitutional limitations as are other police powers. It is wholly fallacious to say that any particular police power is immune from constitutional restrictions.

We come now to a more difficult phase of the situation presented to us by the District government. It says that the statutes which prescribe the procedure for obtaining search warrants in the District of Columbia are so drawn that they are not available for the enforcement of health laws and regulations. Those statutes enumerate the articles or things for which search warrants may be issued and do not refer to articles or conditions offending the health laws.[12] This procedural omission requires action by the Congress, if the Congress deems it advisable that private dwellings be inspected in the course of enforcement of the health laws. The omission cannot be used as a premise for the conclusion that such inspections can be

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[11] Sec. 2, Act of Aug. 8, 1946, 60 Stat. 919, D. C. Code §§ 6–119a to 6–119k (1940) (Supp. VI).

[12] 41 Stat. 726 (1920), as amended, 7 U. S. C. A. § 167, D. C. Code § 6–904 (1940) (relating to plant diseases); D. C. Code § 22-805 (1940) (relating to cruelty to animals); 31 Stat. 1337 (1901), as amended, D. C. Code § 23–301 (1940) (relating to stolen goods, counterfeiting, gambling equipment, etc.); 52 Stat. 792 (1938), D. C. Code § 33–414 (1940) (relating to narcotics).

made without warrant or that Congress intended that they should be. It is untenable to argue that because Congress has failed to provide procedure for obtaining a search warrant, searches otherwise unconstitutional can therefore be made. The situation may well require immediate representations by the District authorities to the Congress for procedural implementation of important public health measures. That is a legislative problem. The function of the courts in situations such as this is to prevent violation by executive officials of constitutional guarantees.

[fol. 40] We concur in the opinion and judgment of the Municipal Court of Appeals, and its judgment is, therefore *Affirmed.*

DISSENTING OPINION

HOLTZOFF, J., dissenting:

With genuine respect for the views of my associates, I sincerely regret that I find myself unable to concur in their conclusion. With considerable hesitancy, I feel impelled to record my dissenting views because the case is one of novel impression involving an important principle of Constitutional law and the decision may have wide implications and far-reaching consequences.

The question presented for determination is whether an Act of Congress, or a municipal ordinance or regulation promulgated pursuant to an Act of Congress, that authorizes health officers in the District of Columbia to enter dwellings without a search warrant for the purpose of inspection, is violative of the provisions of the Fourth Amendment to the Constitution of the United States prohibiting unreasonable searches and seizures.[1] The same problem may arise in respect to building inspectors, plumbing inspectors, and similar officers.

The personal rights of the individual as safeguarded by the Constitution of the United States form one of the bulwarks of American political institutions. The Bill of Rights

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[1]Amendment IV. *Searches and Seizures.* "The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

is a vital part of the foundation on which our Republic rests. It distinguishes us from countries where the rights of the individual citizen are not protected from encroachment by the Government. Ceaseless vigilance is indispensable in order to preserve and maintain these rights. There can be no difference of opinion as to these basic principles.

The problem presented in this case, however, is the definition and the delimitation of one of the fundamental rights guaranteed by the Constitution. The meaning of the terms found in the Bill of Rights cannot be ascertained by a mere recourse to the dictionary. The personal rights to which the Constitution relates are basic concepts. Their significance is to be found in the historical background in which they were nurtured and from which they are derived. Every provision of the Constitution of the United States is compact and succinct, and can be properly and correctly understood and construed only in the light of the annals of the past. The Founding Fathers were thoroughly versed in history and political science and used the terminology found in the fundamental document in its traditional and historical sense.

[fol. 41] The Fourth Amendment does not ban all searches. It prohibits only those that are unreasonable. In determining what constitutes an "unreasonable search," we must delve into the antecedents of the Fourth Amendment and ascertain the meaning that was attached to that term by the framers of the Bill of Rights, among whom were some of the Founding Fathers.[2]

In *Carroll* v. *United States*, 267 U. S. 132, 149, Chief Justice Taft stated:

"The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve

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[2] In *Knowlton* v. *Moore*, 178 U. S. 41, 95, Mr. Justice White stated:

"The necessities which gave birth to the Constitution, the controversies which preceded its formation, and the conflicts of opinion which were settled by its adoption, may properly be taken into view for the purpose of tracing to its source any particular provision of the Constitution, in order thereby to be enabled to correctly interpret its meaning."

public interests as well as the interests and rights of individual citizens."[3]

"The rights of one to be secure in his person, papers, and effects, against unreasonable search and seizure, and not to be compelled in a criminal case to be a witness against himself are fundamental rights under the 4th and 5th Amendments to the Constitution 'which] affect the very essence of constitutional liberty and security'. * * * The true meaning of these rights are to be derived from what was deemed an unreasonable search and seizure at the time of the adoption of the Amendments to the Constitution, and are to be construed in a manner which will serve the public interest on the one hand, while protecting and safeguarding the personal rights of individuals on the other."

In *Boyd* v. *United States*, 116 U. S. 616, 624-625, a case that constitutes a landmark in the law of searches and seizures, Mr. Justice Bradley stated:

"In order to ascertain the nature of the proceedings intended by the Fourth Amendment to the Constitution under the terms 'unreasonable searches and seizures', it is only necessary to recall the contemporary or then recent history of the controversies on the subject, both in this country and in England."

The historical background of the Fourth Amendment is found in the struggle against the use of obnoxious general warrants and writs of assistance invoked by the English and Colonial governments for the purpose of making exploratory searches of homes with a view to discovery and seizure of incriminating books and papers, and contraband property. The celebrated opinion of Lord Camden, in 1765, in *Entick* v. *Carrington*, 19 Howell's State Trials 1029, emphatically condemned these arbitrary and oppressive measures. This decision is properly regarded as a notable milestone in the progress of human liberty. It must have been [fol. 42] well known to the Founding Fathers, many of

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[3] In *Harris* v. *United States*, 151 F. (2d) 837, 839 (C .C. A. 10th); affirmed, 331 U. S. 145, Murrah, J., expressed the same thought as follows:

whom were profound scholars, and it is reasonable to assume that their thinking was influenced by that case.[4]

Referring to the Fourth Amendment, Story in his *Commentaries on the Constitution of the United States*, Sec. 1902, says: "its introduction into the amendments was doubtless occasioned by the strong sensibility excited, both in England and America, upon the subject of general warrants almost upon the eve of the American revolution."

The Fourth Amendment was intended and is to be construed to apply only to criminal prosecutions and proceedings of a quasi-criminal nature for the enforcement of penalties. Its purpose is to limit and regulate searches conducted with a view to discovering and seizing books, papers, and objects to be used as evidence in a criminal proceeding or in an action for the enforcement of a penalty; and to protect any person against the use of evidence in a criminal or penal proceeding, if it has been procured from him by an unreasonable search and seizure. It does not affect the administration of law if criminal prosecutions or suits for penalties are not involved. It does not apply to inspections, if no seizure is intended.

Thus, in *Murray v. Hoboken Land and Improvement Co.*, 18 How. 272, 285, the Supreme Court held by a unanimous vote that the limitations of the Fourth Amendment did not apply to distress warrants for the collection of taxes. Mr.

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[4] That Lord Camden's strictures were directed against the use of general searches solely in connection with criminal prosecutions appears from the following statement in his opinion in *Entick* v. *Carrington*, 19 Howell's State Trials at 1073:

"It is very certain, that the law obligeth no man to accuse himself; because the necessary means of compelling self-accusation, falling upon the innocent as well as the guilty, would be both cruel and unjust; and it should seem, that search for evidence is disallowed upon the same principle. There too the innocent would be confounded with the guilty."

Entick v. *Carrington* is recognized in *Boyd* v. *United States*, 116 U. S. 616, 626, as the precursor of the Fourth Amendment.

Justice Curtis made the following observation on this point:

"But this article has no reference to civil proceedings for the recovery of debts, of which a search warrant is not made part."

Boyd v. United States, 116 U. S. 616, 634, involved the application of the Fourth Amendment to certain customs laws. In that case, the Court made the following observations:

"As, therefore, suits for penalties and forefeitures incurred by the commission of offenses against the law, are of this quasi-criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment of the Constitution, and of that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself; • • •"

The inference is clear that it was the view of the Supreme Court that the Fourth Amendment referred only to proceedings of a criminal or quasi-criminal nature.
[fol. 43] There are a number of district court decisions to the same effect. Thus, in the case of *In re Meador,* 16 Fed. Cases No. 9375, it was held that the limitations of the Fourth Amendment on the issuance of warrants do not apply in certain revenue cases. Similarly, in the case of *In re Strouse,* 23 Fed. Cases No. 13548, it was stated, "The Fourth Amendment • • • is applicable to criminal cases only".

Coming to more recent decisions, in *United States* v. *Eighteen Cases of Tuna Fish,* 5 F. (2d) 979, it was held that the Amendment does not apply to attachments under the Food and Drug Act. In *Camden County Beverage Co.* v. *Blair,* 46 F. (2d) 648, the authorities bearing on this point are exhaustively reviewed and the conclusion is reached that the Fourth Amendment does not apply to a proceeding to revoke a beverage permit, because it is civil in its nature and the Fourth Amendment is applicable only to proceedings of a criminal character.

In *United States* v. *62 Packages, Etc.,* 48 F. Supp. 878, 884, affirmed, 142 F. (2d) 107, it was stated, that "the Fourth Amendment to the United States Constitution does

not apply to a seizure process in civil actions". On the basis of this reasoning the conclusion was reached that proceedings under the Food, Drug and Cosmetic Act, were not subject to the limitations of the Fourth Amendment.

No reported case has been found that extends the scope of the Fourth Amendment to fields other than criminal law or the enforcement of penalties. All the decisions cited in the opinion of the court in support of its conclusion involved criminal prosecutions.

The conclusion that the prohibitions of the Fourth Amendment are limited to proceedings of a criminal or penal nature, is supported by the fact that apparently the Congress has never enacted any statutes providing for the issuance of search warants for any purpose other than the enforcement of the criminal law. The inference is clear that the legislative branch of the Government has continuously construed the Fourth Amendment in the manner here indicated. While this consideration is not conclusive, it is nevertheless entitled to great weight in interpreting the Constitution.[5] Specifically, there is no existing statute under which a health inspector, a plumbing inspector, or a building inspector may obtain a warrant authorizing him to enter a building for the purpose of a routine inspection. It has always been assumed that no search warrant is necessary. On the basis of the conclusion of the Court in this case, these officers may have to suspend their function of inspection until and unless the Congress passes an Act authorizing the issue of search warrants for this purpose. In the interim the District of Columbia may be confronted [fol. 44] with a serious situation. Moreover, even if an Act providing for such search warrants should be placed upon the statute books, how can an inspector make a showing of probable cause as a basis for the issuance of a warrant for the purpose of an ordinary, routine examination? Regular periodic inspections are conducted for the purpose of making certain that laws relating to sanitation and safety are being observed. Such examinations are not confined to situations in which there is a suspicion that the law is being violated. It is necessary that periodic inspections be regularly made for the purpose of securing observance

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[5] *Prigg* v. *Pennsylvania*, 16 Pets. 538, 621; *The Laura*, 114 U. S. 411; *Springer* v. *United States*, 102 U. S. 586, 599; *Field* v. *Clark*, 143 U. S. 649, 691.

of the laws and regulations relating to the safety and health of the community. If a search warrant were necessary for such recurring inspections, the requirement would amount to turning over the supervision of administration from the executive to the judicial branch of the Government, which, as the Supreme Court has observed in the past, would be a source of mischief and is contrary to the philosophy of our form of Government. The Constitution contemplates a tripartite division of Government into three coordinate branches. It was not intended that the judicial branch should have supervisory control over the executive.

Quarantine measures are enforced in large part by inspections. Their validity has been invariably accepted as inherent in the police power of the States and in the Federal power to regulate interstate commerce. For example, in recent years the Federal Government has had occasion to establish quarantines against certain insects. One of the means of enforcement has been to stop every vehicle crossing the quarantine line and examine its interior in order to ascertain whether it carried any plants that might in turn bear some of the insects. The inspection was purely exploratory and preventive, since it could not be said as to any particular vehicle there was reasonable cause to believe that it was transporting any plants. Nevertheless, although the right to *search* a vehicle arises only if there is reasonable ground to believe that it is carrying contraband,[6] such inspections have never been held repugnant to the Fourth Amendment. In fact, as a practical matter, regular and continuous inspections are indispensible in administering a quarantine.

Warrants issued by the courts are of two kinds: warrants of arrest and search warrants. The latter constitute authority to look for specified chattels and to seize them if found. There is no judicial document known to the law that would confer authority merely to inspect premises for the purpose of ascertaining whether certain laws, such as those relating to public health and public safety, are being observed. Such scrutiny has always been conducted by prop- [fol. 45] erly authorized officers without the requirement of judicial sanction. In effect, the opinion of the court proposes to create a new type of process, unknown to the common law or to any statute, and to confer power on the judi-

[6] *Carroll* v. *United States*, 267 U. S. 132.

ciary, that it has never possessed, to supervise the performance of routine administrative duties.

It is urged that inspections such as that in the instant case are an infringement of the sanctity of the home guaranteed by the Fourth Amendment. There is no doubt that the sanctity of the home is one of the fundamental private rights protected by the Constitution and must be safeguarded by the courts. The personal rights accorded to the individual by the first Ten Amendments are not, however, absolute or unqualified. For example, the right of freedom of speech is limited by the prohibition against publication of obscene material, against incitement to crime, and against the creation of public disorder. Mr. Justice Holmes, in his inimitable manner, observed that in the exercise of the right of freedom of speech, no one may rise in a crowded theater and yell "Fire!"[7] Similarly, the right of freedom of religion does not permit, in the name of worship, acts that are regarded as illegal, immoral or offensive.[8] In the same way, the sanctity of the home is not absolute. For example, it is not disputed that representatives of the local government may enter a home if one of its inhabitants is afflicted with a serious contagious disease that constitutes a menace to the community. Representatives of the Fire Department require no search warrant to enter a house in order to extinguish a blaze, even if the owner objects to their presence. In many instances, it is proper for public authorities to enter a building to suppress a nuisance, such as a noisy gathering disturbing the peace of the neighborhood. A law enforcement officer may enter a house without a warrant in order to arrest a person who he has reasonable grounds to believe has committed a felony.[9] The law has al-

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[7] *Schenck* v. *United States*, 249 U. S. 47, 52. See also *Debs* v. *United States*, 249 U. S. 211; *Frohwerk* v. *United States*, 249 U. S. 204; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568.

[8] *Reynolds* v. *United States*, 98 U. S. 145, 161 *et seq.*

[9] An *obiter dictum* contained in the opinion of the court, unwittingly perhaps, summarizes the power of the police to enter a building more narrowly than is justified by existing law. A law enforcement officer may enter a building and arrest without a warrant a person found therein, if the officer has reasonable ground to believe that this person has committed a felony. *Morton* v. *United States*, 79 App. D. C. 329; U. S. Code, Title 18 (new) sec. 3053.

ways recognized that the sanctity of the home is not absolute, but is subject to certain limitations.

The right of inspection in the interest of public safety and public health is one of these qualifications. As was stated in *Hubbell* v. *Higgins*, 148 Iowa 36, 46—

[fol. 46] "The power of the Legislature to provide for inspection of premises in the interest of public safety and the public health is so well established that we will not enter upon a discussion of it. The right of inspection is incidental to the police power, and counsel cite no case wherein it was ever held that the exercise of such power violates any constitutional right of the citizen."

In conclusion, I am of the opinion that the Fourth Amendment relates only to searches and seizures in connection with criminal prosecutions or enforcement of penalties, and does not affect inspections conducted in the course of the administration of statutes and regulations intended to promote public health or public safety. Consequently the statutes and regulations involved in this case are valid; the health inspectors of the District of Columbia had the right to enter respondent's home without a warrant for the purpose of inspection; and, accordingly, the judgment of the Municipal Court of Appeals should be reversed.

[fol. 47] [File endorsement omitted.]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, APRIL TERM, 1949

No. 10092

DISTRICT OF COLUMBIA, Appellant,

vs.

GERALDINE LITTLE, Alias Mildred Parker, Appellee

On Appeal from the Municipal Court of Appeals for the District of Columbia

Before Prettyman and Proctor, JJ., and Alexander Holtzoff, District Judge, Sitting by Designation

JUDGMENT—Filed August 1, 1949.

This cause came on to be heard on the transcript of the record from the Municipal Court of Appeals for the District of Columbia, and was argued by counsel.

On consideration whereof, it is Ordered and Adjudged by this Court that the judgment of the said Municipal Court of Appeals on appeal in this cause be, and the same is hereby, affirmed.

Dated August 1, 1949.

Per Circuit Judge Prettyman.

[fol. 48] [File endorsement omitted.]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

DESIGNATION OF RECORD—Filed August 5, 1949.

To the Clerk of the United States Court of Appeals for the District of Columbia Circuit:

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for Writ of Certiorari in the above entitled case, and include therein the following:

1. Joint Appendix.
2. Minute entry of argument.

3. Opinion of the Court, and dissenting opinion of Judge Holtzoff.
4. Judgment of the Court.
5. This Designation.
6. Clerk's Certificate.

Vernon E. West, Corporation Counsel, D. C.; Chester H. Gray, Principal Assistant Corporation Counsel, D. C.; Edward A. Beard, Assistant Corporation Counsel, D. C., Attorneys for Appellant, District Building.

I certify that on August 5th, 1949, I mailed, postage prepaid, copy of foregoing motion to Messrs. Jeff Busby and Jeff Busby, Jr., attorneys for appellee, Washington Loan and Trust Building, Washington, D. C., their last known address.

Chester H. Gray, Principal Assistant Corporation Counsel, D. C.

[fol. 49] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 50] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI.—Filed November 7, 1949.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.

No. 302

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1949

DISTRICT OF COLUMBIA, *Petitioner*,

vs.

GERALDINE LITTLE, alias MILDRED PARKER,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

VERNON E. WEST,
Corporation Counsel, D. C.,
CHESTER H. GRAY,
Principal Assistant Corporation Counsel, D. C.,
LEE F. DANTE,
Assistant Corporation Counsel, D. C.,
EDWARD A. BEARD,
Assistant Corporation Counsel, D. C.,
Attorneys for Petitioner,
District Building,
Washington 4, D. C.

DIVISION OF PRINTING AND PUBLICATIONS—GOVERNMENT OF THE DISTRICT OF COLUMBIA

INDEX

Subject Index

Cases Cited

Other Authorities

Statutes Cited

MISCELLANEOUS

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1949

No. ——

DISTRICT OF COLUMBIA, *Petitioner,*

vs.

GERALDINE LITTLE, alias MILDRED PARKER,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the District of Columbia, respectfully shows and represents unto your Honors that:

STATEMENT OF THE MATTER INVOLVED

On the 10th day of September, 1947, an information was filed in the Municipal Court for the District of Columbia, Criminal Division, charging that the respondent on the 9th day of September, 1947, in the District of Columbia, and

on premises 1315 10th Street, N. W., did therein hinder, obstruct and interfere with an inspector of the Health Department in the performance of his duty in carrying out the provisions of the Health Regulations contrary to and in violation of an Act of Congress and Health Regulations (R. 3).

The respondent pleaded not guilty and was tried by the Court without a jury (R. 4). The Trial Court took the case under advisement and on April 10, 1948, filed a memorandum opinion (R. 4-8). Respondent was convicted and sentenced to pay a fine of $25.00 or in default thereof to serve a term of ten days in jail (R. 4).

Upon petition of respondent specifying several alleged errors in the trial of the case, including the claim that the attempted entry and inspection of respondent's dwelling over the objection of respondent was an invasion of her constitutional rights of privacy (R. 10), the Municipal Court of Appeals for the District of Columbia allowed an appeal.

In an unanimous opinion (R. 14), the Municipal Court of Appeals for the District of Columbia reversed the conviction, holding that the regulation involved is not unreasonable on its face, but, since its requirements may be carried out within the framework of the Constitution by obtaining a warrant, health officers, when challenged, cannot inspect a private dwelling without a warrant.

The petitioner applied to the United States Court of Appeals for the District of Columbia Circuit for allowance of an appeal, contending that there existed no judicial process for the obtaining of a warrant authorizing entry of a private dwelling for the purpose of inspection even where there is probable cause to believe a condition menacing to health exists therein, that the holding of the Municipal Court of Appeals was not consonant with the scope of the police power as indicated by decisions of this Court and of the United States Court of Appeals, and that the inspection sought to be made of respondent's premises even if judged in the light of the Fourth Amendment was

not such an unreasonable search as is prohibited by that Amendment.

In a divided opinion (R. 30) the United States Court of Appeals affirmed the judgment of the Municipal Court of Appeals for the District of Columbia, the majority holding that there is no distinction between inspecting a private dwelling for the purpose of ascertaining whether or not laws relating to sanitation and safety are being observed and searching it for evidence of crime; that the Fourth Amendment is not limited to criminal cases, but prohibits any invasion of a private dwelling by a government official without warrant, except in case of acute emergency or unavoidable crisis, regardless of the purpose of the inspection, and that any Act of Congress purporting to permit the invasion of homes by government officials, other than in case of such emergency, would be wholly void.

In his dissenting opinion (R. 40), Judge Holtzoff held that the Fourth Amendment relates only to searches and seizures in connection with criminal prosecutions and proceedings of a quasi-criminal nature for the enforcement of penalties, and that it does not affect inspections conducted in the course of administration of statutes and regulations intended to promote public health or public safety, if no seizure is intended.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered August 1, 1949 (R. 30). The jurisdiction of this Court to issue the Writ applied for is invoked under Title 28, U. S. Code, Sec. 1254 (Act of June 25, 1948, 62 Stat. ——, Ch. ——).

QUESTION PRESENTED

The question presented is whether the entry of a private dwelling without warrant by a health officer or other municipal official under reasonable conditions and circumstances of

fact in the discharge of duties imposed upon him by Acts of Congress and regulations promulgated thereunder designed to protect public health, safety and welfare, is unlawful as violative of the provisions of the Fourth Amendment to the Constitution of the United States prohibiting unreasonable searches and seizures.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

1. The United States Court of Appeals for the District of Columbia Circuit in this case has decided a question of substance relating to the construction and application of the Constitution of the United States and statutes enacted by the Congress which has not, but should be, settled by this Court.

2. The United States Court of Appeals for the District of Columbia Circuit has decided that inspection of a dwelling by a health officer, for the enforcement of health laws and regulations validly enacted and adopted in the exercise of the police power, and for which no warrant has ever been provided, cannot be made without a warrant over the objection of the occupant.

3. *The question is of* the greatest *importance to the* District of Columbia in the enforcement of health and other laws enacted for the preservation of health, safety and welfare, and of regulations promulgated thereunder. The holding of the United States Court of Appeals for the District of Columbia Circuit has rendered administratively unenforceable, if not void, every act of Congress imposing upon municipal officers the duty of inspecting dwellings and other buildings for the purpose of securing compliance with such laws and regulations in the District of Columbia. No statute has been enacted providing for the issuance by any court or magistrate of an "inspection warrant" to authorize the officers charged with such duties to enter a dwelling against the will of the owner or occupant for the

purpose of making inspection. The suggestion of the Court of Appeals (R. 39) provides no solution of the problem; for no such statute can be drafted which will be effective and also in compliance with the limitations of the Fourth Amendment.

4. This Court should determine whether the provisions of the Fourth Amendment to the Constitution of the United States prohibiting unreasonable searches and seizures apply to every inspection of a private dwelling sought to be made by a health officer or other municipal official charged with the duty of enforcing laws and regulations enacted and promulgated under the police power, or whether they should be construed to apply only to criminal prosecutions and to proceedings of a quasi-criminal nature for the enforcement of penalties.

DISTRICT OF COLUMBIA,
Petitioner.

By:
VERNON E. WEST,
Corporation Counsel, D. C.,

CHESTER H. GRAY,
Principal Assistant Corporation Counsel, D. C.,

LEE F. DANTE,
Assistant Corporation Counsel, D. C.,

EDWARD A. BEARD,
Assistant Corporation Counsel, D. C.,
Attorneys for Petitioner,
District Building,
Washington 4, D. C.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

THE OPINIONS BELOW

The opinion of the Municipal Court of Appeals for the District of Columbia is reported in 62 A. 2d 874.

The opinion of the United States Court of Appeals for the District of Columbia Circuit is not yet reported.

GROUNDS OF JURISDICTION

The grounds on which the jurisdiction of this Court is invoked are:

1. The United States Court of Appeals has decided a question of substance relating to the construction and application of the Constitution and of statutes enacted by the Congress of the United States in the exercise of the police power which has not been, but should be, settled by this Court.

2. The United States Court of Appeals has not given proper effect to the decisions of this Court applicable to the question decided.

3. The United States Court of Appeals has decided an important question of law involving the Constitution and statutes of the United States applicable to the District of Columbia, and regulations promulgated thereunder, which decision is in conflict with the decisions of this Court and its prior decisions relating to the Congress and to the police power.

STATEMENT OF THE CASE

The respondent here was charged (R. 3), tried and convicted (R. 4) upon an information alleging that on September 9, 1947 she hindered, obstructed and interfered with an inspector of the Health Department in the performance of his duty in violation of law.

The regulation upon which the information was based is contained in Paragraph 12 of the Commissioners' Regulations Concerning the Use and Occupancy of Buildings and Grounds (R. 26; App 26). The regulation stems from a Joint Resolution of the Congress (R. 22; App. 25) which, in the exercise of its exclusive legislative authority over the District of Columbia (Constitution of the United States, Article 1, Section 8, Clause 17), has authorized the Commissioners of the District of Columbia to make all such usual and reasonable police regulations as they might deem necessary for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia. By later Acts (R. 22, 27; App. 26), the Congress granted specific authority to the Commissioners of the District of Columbia to make all regulations necessary for the collection and disposition of garbage in the District of Columbia. Pursuant to such delegated authority, the Commissioners of the District of Columbia promulgated regulations for the use and occupancy of buildings and grounds, and regulations prescribing the manner in which garbage should be stored by the occupants of dwelling houses pending its collection by municipal agencies (R. 26-28; App. 26-28). These regulations impose upon the Health Officer the duty of inspecting buildings for the purpose of ascertaining whether or not their condition is such as to affect the public health, safety and welfare (R. 26).

The respondent pleaded not guilty to the charge contained in the information and the case was tried by the Court without jury on November 3, 1947 (R. 4).

At the trial below the prosecution adduced testimony to establish the following facts:

An occupant of premises No. 1315 10th Street, N. W., made complaint to the Health Officer that there was an accumulation of loose and uncovered garbage and trash in the halls of said premises and that certain of the persons residing therein had failed to avail themselves of the toilet facilities, whereupon the Health Officer directed an inspector of the Health Department to make an inspection of said premises. Accompanied by a uniformed member of the Metropolitan Police Department the uniformed health inspector proceeded to said premises. Upon arrival the health inspector and the police officer observed one Allen about to enter said premises. The health inspector identified himself as an inspector of the Health Department, stated the nature of his business, and asked permission of Allen to enter the premises for the purpose of making an inspection. Allen refused to permit the health inspector to enter, stating that the owner of the premises was not at home. During the discussion between the health inspector and Allen a woman, who at that time was unknown to the health inspector or to the police officer, was standing across the street from the premises. She called to Allen not to permit the inspector to enter the premises. Thereafter this woman came across the street and up to the porch of the said premises and continued to tell Allen not to permit the inspector to enter the said premises for the purpose of making an inspection. The police officer asked the woman if she were the owner of the premises and upon her denial of ownership of the premises instructed her to go about her business. (R. 12). Allen was then informed that he was interfering with a health officer in the performance of his duties, and was placed under arrest. The police officer thereupon took Allen to the nearest police call box. The unidentified woman followed along protesting the right of the health inspector to enter the premises. She finally

identified herself as the owner of the premises, and demanded that she also be arrested for interfering with a health officer in the performance of his duties. She thereupon seized the health inspector's arm and attempted to grab the papers he was holding in his hand. She was then arrested.

The police officer testified substantially the same as the health inspector. On cross examination the health inspector and the police officer both testified they had no warrant or other process of court. The District of Columbia thereupon announced its case as closed. (R. 13).

The respondent testified in her own behalf substantially as follows: That she came from across the street with a bundle of groceries in her hand and saw the health inspector and the police officer in front of her door talking to Allen; that she was asked if she lived at these premises and she replied that it was her private residence; that the health inspector and the police officer then demanded that she permit the health inspector to make an inspection of the premises; that she denied permission to them to enter said premises on the ground that her constitutional rights did not require her to submit to an inspection; and that after some discussion respondent and Allen were placed under arrest for interfering with a health inspector in the performance of his duties and taken to the nearest patrol box. (R. 13).

The evidence adduced by the prosecution was wholly of a testimonial character and related exclusively to events occurring beyond the confines of the respondent's dwelling. No search of her dwelling was made and no demonstrative evidence was seized. No facts obtained by visual observation of the confines of her dwelling were introduced into evidence against her. (R. *passim*). The trial court took the case under advisement, and on April 10, 1948 filed a memorandum opinion holding the defendant guilty of a violation of the regulation and thereafter imposed sentence (R. 4-8). Upon appeal, the Municipal Court of Appeals for the District of Columbia reversed, holding that "It is

within the police power of municipal corporations to control and regulate the manner of collection and disposition of garbage, refuse or filth, but regulations of this kind must not unduly infringe upon individual rights." (62 A. 2d 876; R. 17-18). The Municipal Court of Appeals further held that

> " * * * The regulation does not require an unconstitutional method of search. It may be carried out within the framework of the Constitution by obtaining a warrant. Hence we do not wish to be understood as saying that the regulation is unreasonable on its face.
>
> "We express an opinion only as to its application under the present facts. We believe that the conditions of this case did not warrant the action taken by the health officer. Neither summary abatement nor entry over objection can be justified under the circumstances. * * * " (62 A. 2d 876; R. 19).

Petitioner duly applied for the allowance of an appeal from the judgment of the Municipal Court of Appeals for the District of Columbia to the United States Court of Appeals for the District of Columbia Circuit and the appeal was allowed because of the importance of the question raised to the enforcement of the health laws.

In its opinion affirming the judgment of the Municipal Court of Appeals, the United States Court of Appeals for the District of Columbia Circuit, while recognizing that no statutory procedure existed in the District of Columbia for issuance of a magistrate's warrant to conduct an inspection of a dwelling (R. 39), nevertheless held:

> "* * * that health officials without a warrant cannot invade a private home to inspect it to see that it is clean and wholesome, or to search for garbage upon a complaint that garbage is there, or to see whether the occupants have failed to avail themselves of the toilet facilities therein." (R. 38).

In his dissenting opinion Judge Holtzoff held that:

> "* * * the case is one of novel impression involving an important principle of Constitutional law and the decision may have wide implications and far-reaching consequences" (R. 40)

and declared that the Fourth Amendment does not apply to inspection in aid of the police power, if no seizure is intended (R. 42), and that the right to inspect a dwelling in the interests of public safety and public health is a qualification upon the right of privacy in the home, which if reasonably exercised, is perfectly proper. (R. 45).

This petition seeks a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit to review the judgment of that Court in the instant case.

SPECIFICATION OF ERRORS

The United States Court of Appeals for the District of Columbia Circuit erred:

1. In holding that the Fourth Amendment to the Constitution of the United States applies to inspections of private dwellings by health officers for the purpose of securing observance of laws enacted under the police power to the same extent that it applies to searches of persons and dwellings and the seizure of articles for use as incriminatory evidence in criminal prosecutions.

2. In holding that a private dwelling may not be inspected without a warrant, over the objection of the owner or occupant, by a health officer for the purpose of securing compliance with laws and regulations enacted and made in the exercise of the police power, in the absence of acute emergency or unavoidable crisis.

STATUTES INVOLVED

Constitutional provisions, statutes and regulations involved and other statutes and regulations affected by the decision of the United States Court of Appeals are set forth in the Appendix.

SUMMARY OF ARGUMENT

The question posed, whether the Fourth Amendment shall operate to restrict an exercise of the police power bearing no relationship to incrimination of crime, is one which can arise only in the District of Columbia; for only in the District of Columbia does the Federal Government, the only entity restricted by the Fourth Amendment, have and exercise the inherent police power of the sovereign. Since the question has not previously been raised in this jurisdiction, it is a novel one in the Federal Courts.

This Court and the subordinate Federal Courts have consistently recognized that the search and seizure clause of the Fourth Amendment is logically supplementary to that portion of the Fifth Amendment which protects the individual against self-incrimination, Boyd v. United States, 116 U. S. 616, and that the only effective method of enforcing the Fourth Amendment in the Federal Courts is the exclusion from evidence in a criminal proceeding of those articles seized in violation of the Fourth Amendment from the home or person of the individual accused of crime. Weeks v. United States, 232 U. S. 383. The opinion of the United States Court of Appeals in the instant case stands alone at variance with these decisions; for it holds that the inspection without warrant of a dwelling by an official attempting to exercise the police power delegated to him in aid of the public health, safety and welfare is effectively barred by the terms of the Fourth Amendment in the absence of a compelling emergency, in which case it is recognized that public officials "must take such steps as are necessary to protect the public." (R. 39).

This exception demonstrates the flaw in the reasoning of the majority of the Court below; for if any line of demarcation or exception to the application of the Fourth Amendment is countenanced, the issue is then one of reasonableness in the exercise of the police power as determined by

the facts, and the necessary effect of the holding of the majority is that the acts of the health inspector in the instant case constituted an unreasonable exercise of the police power reposed in him.

But there exists in the record certified herewith an abundance of uncontradicted evidence to establish that in fact the proposed inspection was a reasonable one if any routine inspection of a dwelling can be justified as a logical projection of the police power supporting the interest of the public in its own health and safety. The respondent never asserted or made an effort to prove that the proposed inspection was in fact unreasonable, but relied entirely upon her claim that, without a warrant, the proposed inspection was in violation of her constitutional guaranties. (R. 13, 10).

The importance of the effect of this decision, both upon the abstract constitutional doctrines already incorporated into the law of the land, and upon the practical administration of inspection laws (App. 28-32) by various municipal officials upon whom is imposed the duty and responsibility of the protection of the health, safety and welfare of the public, can hardly be overestimated. Thousands of inspections of dwelling houses are conducted every year in aid of the various phases of the police power. All, or the overwhelming majority of them, are based upon good reason, but certainly not more than a minority are based upon the probable cause required by the Fourth Amendment as the necessary prerequisite for the issuance of a magistrate's warrant.

The balancing of the interest of the individual in privacy against the interest of the public in protection against sickness and epidemic is a problem which cannot be solved in the manner suggested by the majority opinion. It is sufficiently clear not to require argument that if the officer charged with the duty of making inspections has probable cause to the extent necessary to obtain a magistrate's warrant, he need not make inspection but may take immediate action to secure compliance with the law. Accordingly, if

the majority opinion be correct, the enactment of a statute establishing a procedure for the issuance by a magistrate of "inspection warrants" will, if it requires probable cause, be of no practical value in the making of inspections and will, if it does not require probable cause, be violative of the Constitution as interpreted by the majority of the Court below.

Either the majority opinion of the Court below is correct and the right of privacy must be maintained whole and unblemished at the expense of reasonable enforcement of laws designed for the public good, or the judgment of the majority below must be reversed, upon the ground that the United States Court of Appeals has mistakenly enlarged the scope of the Fourth Amendment to make it applicable to a field of law not intended by the framers of that amendment and not sanctioned by the decisions of this Court construing it.

The Congress, the courts, the community and every American are entitled to the views of this Court upon such a far reaching and fundamental question.

ARGUMENT

I

The Question is Novel

Exclusive power to legislate for the District of Columbia is expressly delegated to Congress by Article I, Section 8, clause 17 of the Constitution of the United States. It is well settled that in the exercise of that exclusive legislative authority

> "* * * Congress may legislate within the District for every proper purpose of government." *Neild* v. *District of Columbia*, 71 App. D. C. 306, 309, 110 F (2d) 246, 249,

and it has been declared that

> "* * * Although the police power fundamentally belongs to the states and not the federal govern-

> ment, the right to exercise it for the general good is an inherent attribute of sovereignty. It follows that the Congress may legislate in the exercise of the police power with respect to matters local to the District of Columbia." *Kindleberger* v. *Lincoln Nat. Bank of Washington*, 81 U. S. App. D. C. 101, 106, 155 F (2d) 281, 286, 167 A. L. R. 1011, 1017,

and that

> "The power of Congress to enact regulations affecting the public peace, morals, safety, health, and comfort within the District of Columbia is the same as that of the several state legislatures within their respective territorial limits. It is no less, nor can it be greater; * * *" *Moses* v. *United States*, 16 App. D. C. 428, 50 L. R. A. 532, 535.

Since the Fourth Amendment is a limitation only upon the United States, the question presented herein could arise only where Congress may undertake to exercise this "police power", that is, only in the District of Columbia. This is the first reported decision in which the Fourth Amendment has been invoked to test the scope of the power of Congress to legislate in the exercise of the police power possessed by it as an inherent attribute of the sovereignty granted by the 17th clause of Section 8, Article I of the Constitution.

II

The Question is Important

It is obvious from a review of the statutes providing for inspection without warrant contained in the record herein (R. 22-24; App. *passim*) that Congress has, contrary to the view of the majority below, acted upon the assumption that inspection of private dwellings for the protection of health and safety could be conducted under reasonable conditions of fact without warrant.[1] Municipal regulations implement-

[1] Compare Act of Mar. 3, 1921, R. 24, App. 31, (Weights and Measures).

ing the specific provisions of those Acts of Congress, as well as administrative custom and usage, have developed upon the assumption that the inspection of private dwellings in the enforcement of the police power does not require a magistrate's warrant. Over the course of years the various inspection divisions of those agencies of the District of Columbia charged with the enforcement of the police power have grown to a point where actually tens of thousands of inspections of private dwellings are made by the municipality each year.

The Annual Report of the Commissioners of the District of Columbia to the Congress for the fiscal year ended June 30, 1948 establishes, for example, that the Bureau of Public Health Engineering of the Health Department in that year made 24,626 original inspections and 34,786 reinspections, which resulted in the issuance of 22,001 orders to correct nuisances and the abatement of 21,773 nuisances. Approximately one-third of those nuisances abated involved the existence of rubbish and garbage potentially menacing to the health and safety of the community. (Report, p. 179).

The Plumbing Inspection Division of the Engineer Department conducted 40,784 inspections of plumbing in existing structures and buildings under construction or repair. Included in that figure were 5,213 complaints of defective plumbing which were ordered abated after inspection. (Report, p. 123). Like figures are available from the Building Inspection Division of the Engineer Department of the District of Columbia, the Bureau of Preventable Diseases of the Health Department, the Water Division, the Electrical Inspection Division, and other agencies of the municipality engaged in the protection of the public health, safety and welfare, and the protection of property, by means of inspections of buildings, including private dwellings in the District of Columbia.

No existing statute provides for a magistrate's "inspection" warrant nor could one be drafted which would be

both effective and in compliance with the Fourth Amendment as applied by the Court below; for possession of the personal knowledge and probable cause required for a warrant under the Fourth Amendment would enable the health official to take immediate action to secure compliance with the law and render inspections unnecessary. For this reason, the opinion of the Court below strikes a grievous and crippling blow at the very foundation upon which practical enforcement of the police regulations of the city has rested for over seventy years.

The opinion of the United States Court of Appeals, if allowed to stand, will have even wider repercussions than these however. As an expression of the highest Federal Court yet to consider this issue, it is a cogent precedent influencing the decisions of those State Courts in which the same clause in various State Constitutions may be invoked to limit and restrict the reasonable exercise of the police power in other municipalities.

III

The Position of Petitioner is Sufficiently Meritorious to Justify Consideration by this Court

It is the position of petitioner that there is a fundamental distinction between entry of a dwelling for the purpose of securing incriminatory evidence and inspections made under the police power for the purpose of securing compliance with reasonable laws designed to protect public health, life and safety. In the first class of cases the sole purpose of the invasion is to secure evidence upon which to base proceedings looking to punishment of a law violator. In the latter class of cases the whole purpose of the inspection is to ascertain whether laws enacted in the exercise of the police power are being violated and if so, to require the taking of steps necessary to secure the abatement of a condition which is, or if not corrected will become, a positive menace to life, health or safety.

In the instant case there is no evidence that a violation of law or regulation existed within the dwelling. If inspection had been consummated and if the condition alleged had been found to exist, criminal prosecution would not necessarily have followed; summary abatement proceedings might have been indicated. But the Court below has placed the bar of the Fourth Amendment across the threshold to prohibit the inspection.

The inherent governmental power of the sovereign is not unrestricted in the absence of the application to it of the search and seizure clause of the Fourth Amendment. There is implicit within the police power a restriction and limitation of reasonableness. If the act to be done bears no reasonable relationship to the public purpose to be attained, or if it be an abusive exercise of a course of conduct reasonably related to the public purpose it attempts to serve, it is unlawful and void as violative of the due process clause of the Fifth Amendment.

Up to the time of the decision below, both Congress and the Courts generally throughout the nation have regarded the limitation of reasonableness inherent in the police power as a sufficient protection of the Constitutional rights of the people. In this case, despite the vigorous opposition of Judge Holtzoff, and without regard to the repeated enactments of Congress (R. 23-24, App. *passim*) by which it provided for the protection of the life, health, safety and welfare of the community by use of the process of inspection, the majority of the Court below has blended the search and seizure clause of the Fourth Amendment and an unprecedented conclusion that the standard of reasonableness under the police power is controlled by the existence of an acute emergency, into an artificial dogma to operate as an additional and unjustified restriction upon the reasonable exercise of the police power.

It is apparent that in this case the interest of the community in protection against the hazards which call for the

exercise of the police power is arrayed against the interest of the individual in the right of privacy. It is submitted that this conflict of interests can and should be resolved by application of presently existing principles of law, rather than by enlargement of the scope of the search and seizure clause of the Fourth Amendment to restrict the whole field of police power enforcement to which, until the majority opinion below, it had no application.

CONCLUSION

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that a proper construction of the Constitution and of the Acts of Congress involved, and of the Acts of Congress which will be affected by the decision of the United States Court of Appeals, may be had, and that to such an end a Writ of Certiorari should be granted and this Court should review the decision of the United States Court of Appeals for the District of Columbia Circuit and finally reverse it.

VERNON E. WEST,
Corporation Counsel, D. C.

CHESTER H. GRAY,
Principal Assistant Corporation Counsel, D. C.

LEE F. DANTE,
Assistant Corporation Counsel, D. C.

EDWARD A. BEARD,
Assistant Corporation Counsel, D. C.
Attorneys for Petitioner,
District Building
Washington, D. C.

APPENDIX

Article 1, Section 8, Clause 17 of the Constitution provides:

> *"The Congress shall have power* • • • To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States • • •"

The Fourth Amendment to the Constitution provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Act of March 3, 1901, 31 Stat. 1337, ch. 854, § 911; and of April 5, 1938, 52 Stat. 199, ch. 72, § 3, D. C. Code, 1940 ed., Section 23-301 (Search Warrants):

> "Upon complaint, under oath, before the police court, or a United States commissioner, setting forth that the affiant believes and has good cause to believe that there are concealed in any house or place articles stolen, taken by robbers, embezzled, or obtained by false pretenses, forged or counterfeited coins, stamps, labels, bank bills, or other instruments, or dies, plates, stamps, or brands for making the same, books or printed papers, drawings, engravings, photographs, or pictures of an indecent or obscene character, or instruments for

immoral use, or any gaming table, device, or apparatus kept for the purpose of unlawful gaming, or any lottery tickets or lottery policies, or any book, paper, memorandum, or device for or used in recording any bet or deposit of money or thing or consideration of value received for any share, ticket, certificate, writing, bill, slip, or token in any pool or lottery or as a wager on or in connection with any race, game, contest, election, or other gambling transaction or device of an unlawful nature as defined in sections 22-1501, 22-1503, 22-1504, 22-1505, 22-1507, 22-1508, particularly describing the house or place to be searched, the things to be seized, substantially alleging the offense in relation thereto, and describing the person to be seized, the said court or United States commissioner may issue a warrant either to the marshal or any officer of the Metropolitan Police commanding him to search such house or place for the property or other things, and, if found, to bring the same, together with the person to be seized, before the police court or United States commissioner issuing said warrant, as the case may be.

"The said warrant shall have annexed to it, or inserted therein, a copy of the affidavit upon which it is issued, and may be substantially in the form following:

" 'Whereas there has been filed before _____ an affidavit, of which the following is a copy (here insert). These are therefore to command you to enter (here describe the place) and there diligently search for the said articles, goods, or chattels in the said affidavit described, and that you bring the same, or any part thereof, found on said search and also the body of _____ before the police court, or United States commissioner, as the case may be, to be dealt with and disposed of according to law.' "

Act of June 11, 1878, 20 Stat. 102, ch. 180, (Organic Act the District of Columbia):

"Sec. 8. That in lieu of the board of health now authorized by law, the Commissioners of the District of Columbia shall appoint a physician as health-officer, whose duty it shall be, under the direction of the said Commissioners, to execute and enforce all laws and regulations relating to the public health and vital statistics, and to perform all such duties as may be assigned to him by said Commissioners; and the board of health now existing shall, from the date of the appointment of said health officer, be abolished."

"Sec. 9. That there may be appointed by the Commissioners of the District of Columbia, on the recommendation of the health-officer, a reasonable number of sanitary inspectors for said District, not exceeding six, to hold such appointment at any one time, of whom two may be physicians, and one shall be a person skilled in the matters of drainage and ventilation; and said Commissioners may remove any of the subordinates, and from time to time may prescribe the duties of each; and said inspectors shall be respectively required to make, at least once in two weeks, a report to said health-officer, in writing, of their inspections, which shall be preserved on file; and said health-officer shall report in writing annually to said Commissioners of the District of Columbia, and so much oftener as they shall require."

Ordinance of the Late Board of Health of the District of Columbia legalized by Joint Resolution approved April 24, 1880, 21 Stat. 304; Supplement to the Revised Statutes of the United States 303, 306; (D. C. Code, 1940, Section 611):

"Sec. 26. That it shall be the duty of the health-officer appointed by this board, upon receiving information or obtaining knowledge of the existence of any thing or things herein declared to be nuisances, or any thing or things which may

hereafter be declared to be nuisances by any ordinance or resolution enacted or adopted by this board, to notify the person or persons committing, creating, keeping, or maintaining the same, to remove, or cause to be removed, the same within twenty-four hours, or such other reasonable time as may be determined by this board, after such notice be duly given; and if the same be not removed by such person or persons within the time prescribed in said notice, it shall be the duty of the health-officer aforesaid to remove, or cause to be removed, such nuisance or nuisances, and all costs and expenses of such removal shall be paid by the persons committing, creating, keeping, or maintaining such nuisance or nuisances; and if the said costs and expenses thus accruing shall not be paid within ten days after such removal by said health-officer, the same shall be collected from the person or persons committing, creating, keeping, or maintaining such nuisances, by suit at law."

Act of August 11, 1939, 53 Stat. 1408, Ch. 691, *as amended* August 8, 1946, 60 Stat. 921, ch. 871, Secs. 1 and 8; D. C. Code, 1940 ed., Supp. VI, Secs. 6-118, 6-119f: (Communicable Diseases):

"The Commissioners of the District of Columbia are hereby authorized and empowered to promulgate and enforce all such reasonable rules and regulations as they may deem necessary to prevent and control the spread of communicable and preventable diseases in the District of Columbia, including the authority and power to provide for the isolation, quarantine, and restriction of the movements of persons affected by or believed, upon probable cause, to be affected by communicable disease and of persons who are or are believed, upon probable cause, to be carriers of communicable disease."

* * * * * * * *

"Sec. 8. The Health Officer may, without fee or hindrance, enter, examine, and inspect all vessels, premises, grounds, structures, buildings, and every part thereof in the District of Columbia for the purpose of carrying out the provisions of this Act and the regulations issued hereunder. The owner or his agent or representative and the lessee or occupant of any such vessel, premises, grounds, structure, or building, or part thereof, and every person having the care and management thereof shall at all times when required by any such officer or employee give them free access thereto and refusal so to do shall be punishable as a violation of this Act."

Section 2 of the Joint Resolution approved February 26, 1892, 27 Stat. 394, Res. No. 4, D. C. Code, 1940 ed., Sec. 1-226:

"The Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce all such reasonable and usual police regulations in addition to those already made under the act of January twenty-sixth, eighteen hundred and eighty-seven, as they may deem necessary for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia."

Commissioners' Regulations Concerning the Use and Occupancy of Buildings and Grounds, promulgated April 22, 1897, amended July 28, 1922:

* * * * * * * *

"2. That it shall be the duty of every person occupying any premises, or any part of any premises, in the District of Columbia, or if such premises be not occupied, of the owner thereof, to keep such premises or part, * * * clean and wholesome; if, upon inspection by the Health Officer * * * it be ascertained that any such premises, or any part

thereof, or any building, * * * is not in such condition as herein required, the occupant or occupants of such premises or part, or the owner thereof, * * * shall be notified thereof and required to place the same in a clean and wholesome condition; and in case any person shall fail or neglect to place such premises or part in such condition within the time allowed by said notice he shall be liable to the penalties hereinafter provided.

* * * * * * * *

"10. That the Health Officer shall examine or cause to be examined any building supposed or reported to be in an unsanitary condition * * *.

* * * * * * * *

"12. That any person violating, or aiding or abetting in violating, any of the provisions of these regulations, or interfering with or preventing any inspection authorized thereby, shall be deemed guilty of a misdemeanor, and shall, upon conviction * * * be punished by a fine of not less than $5 nor more than $45."

Act approved January 27, 1905 (33 Stat. pt. 1, 621), entitled "An Act To Authorize the Commissioners of the District of Columbia to enter into contract for the collection and disposal of garbage, ashes, and so forth."

"* * * *Provided further*, That said Commissioners are hereby authorized to make all regulations necessary for the collection and disposal of garbage, miscellaneous refuse, ashes, dead animals, and night soil and to annex to such regulations such penalties as may in the judgment of said Commissioners be necessary to secure the enforcement thereof."

Police Regulations of the District of Columbia, Article XXI,—Garbage, Ashes, and Other Refuse:

"Section 1. The word 'garbage' whenever it occurs in this article shall be held to mean the refuse of any animal and vegetable foodstuffs, except oyster and claim shells; and the words 'dead animals' whenever they occur in this article shall be held to mean any dead animal not killed for food.

"Sec. 2. Occupants of dwelling houses, proprietors of boarding houses, commission warehouses, hotels, restaurants, and other places where garbage is accumulated, and owners, agents, and occupants of apartment or tenement houses shall provide for the use of such premises a sufficient number of receptacles to contain all garbage which may accumulate on said premises during the usual interval between the collections of garbage therefrom and shall keep such receptacles at all times in good repair. Each such receptacle shall be made of metal, watertight, provided with a tight cover with a handle, and shall be so constructed that the contents can be removed therefrom easily and without delay. No person without a permit from the supervisor of city refuse division shall use for the reception of garbage any receptacle having a capacity of less than 3 nor more than 10 gallons nor more than 1 receptacle containing less than 10 gallons. Garbage receptacles of the sunken type shall be located at the point of collection or the interior can must be covered and set out for collection as herein provided.

"Sec. 3. Occupants of any dwelling house, apartment, or tenement house, and each proprietor of any boarding house, commission warehouse, hotel, restaurant, and other place where garbage is accumulated shall cause all garbage from his or her premises to be put in the receptacle provided for the purpose. Each person aforesaid shall cause such receptacle to be kept covered at all times and to be placed and to remain between the hours of 7 a. m. and 6 p. m. of each day on which the collection is made from his or her premises, in such position as to be easily accessible to the garbage collector, or as may be designated by

the supervisor of city refuse division. No person shall place or cause to be placed in any garbage receptacle any substance other than garbage, which shall at all times be kept free from dishwater and as dry as practicable."

* * * * * * * *

OTHER ACTS OF CONGRESS AFFECTED

Section 4 of the *Act approved April 23, 1892,* 27 Stat. 21, D. C. Code, 1940 ed., Sec. 1-727, (Plumbing Inspection):

"The inspector of plumbing and his assistants shall be under the direction of said Commissioners, and they are hereby empowered accordingly, to inspect or cause to be inspected, all houses when in course of erection in said district, to see that the plumbing, drainage, and ventilation of sewers, and gas-fittings thereof conform to the regulations hereinbefore provided for; and also at any time, during reasonable hours, under like direction, on the application of the owner, or occupant, or the complaint under oath of any reputable citizen to inspect or cause to be inspected any house in said district, to examine the plumbing, drainage, and ventilation of sewers, and gas-fittings thereof, and generally to see that the regulations hereinbefore provided for are duly observed and enforced."

Section 1 of the *Act approved March 1, 1899,* 30 Stat. 923, as amended, D. C. Code, 1940 ed., Sec. 5-501: (Condemnation of Unsafe Buildings):

"If in the District of Columbia any building or part of a building, staging, or other structure, or anything attached to or connected with any building or other structure or excavation, shall, from any cause, be reported unsafe, the inspector of buildings shall examine such structure or excavation, and if, in his opinion, the same be unsafe, he shall immediately notify the owner, agent, or

other persons having an interest in said structure or excavation, to cause the same to be made safe and secure, or that the same be removed, as may be necessary. The person or persons so notified shall be allowed until 12 o'clock noon of the day following the service of such notice in which to commence the securing or removal of the same; and he or they shall employ sufficient labor to remove or secure the said building or excavation as expeditiously as can be done; *Provided, however,* That in a case where the public safety requires immediate action the inspector of buildings may enter upon the premises, with such workmen and assistants as may be necessary, and cause the said unsafe structure or excavation to be shored up, taken down, or otherwise secured without delay, and a proper fence or boarding to be put up for the protection of passersby."

Section 2 of the *Act approved April 26, 1904,* 33 Stat. 307, D. C. Code, 1940 ed., Sec. 1-720: (Electrical Inspections):

"The electrical engineer who shall be chief inspector of electrical work and his assistants are hereby empowered and required, under the direction of the commissioners, to inspect any building in course of erection and during reasonable hours to enter into and examine any building where electrical current is produced or utilized for lighting, heating, or for power, for the purpose of ascertaining violations of any of the provisions of sections 1-719 to 1-723; and upon finding any devices aforesaid defective or dangerous shall cause to be delivered a written notice of any violation of any provisions of said sections, or of any regulations of said Commissioners duly adopted, to the constructing contractor, owner, or agent of any building directing him or them to remove or amend the same within a period to be fixed in said notice; and in case of neglect or refusal on the part of the party so notified to remove or amend the same within the time and in the manner prescribed by the

chief inspector of electrical work, and approved by the Commissioners of the District of Columbia, the party so offending shall pay a fine of not more than $25 for each and every day's failure or neglect to remove or amend the same after being so notified, and in default of payment of such fine such persons shall be confined in the workhouse of the District of Columbia for a period not exceeding one month; and all prosecutions under sections 1-719 to 1-723 shall be in the police court of said District, in the name of the District of Columbia."

Act of May 1, 1906, 34 Stat. 157, Secs. 1 and 11, D. C. Code, 940 ed., Secs. 5-601, 5-611: (Condemnation of Insanitary Buildings)

"There is hereby created in and for the District of Columbia a board to be known as the Board for the condemnation of Insanitary Buildings in the District of Columbia, to consist of the assistant to the engineer commissioner in charge of buildings, the health officer, and the inspector of buildings of said District, and to have jurisdiction and authority to examine into the sanitary condition of all buildings in said District, to condemn those buildings which are in such insanitary condition as to endanger the health or lives of the occupants thereof or of persons living in the vicinity, and to cause all buildings to be put into sanitary condition or to be vacated, demolished, and removed, as may be required by the provisions of this chapter. Said board may authorize and direct the performance of any of the ministerial duties of said board by officers, agents, employees, contractors, and employees of contractors duly detailed or employed by the commissioners of said District for that purpose. Said board, the members thereof, and all persons acting under its authority, may, between the hours of 8 o'clock antemeridian and 5 o'clock postmeridian, peaceably enter into and upon any and all lands and buildings in said Dis-

trict for the purpose of inspecting the same. Said board shall report its operations to the commissioners of the District of Columbia from time to time as said commissioners direct. Said commissioners shall furnish said board such assistance as may be required for the proper conduct of its work, by details from various departments and officers of the government of said District."

* * * * * * * * * *

"Sec. 11. No person shall interfere with any member of the Board for the Condemnation of Insanitary Buildings or with any person acting under authority and by direction of said board in the discharge of his lawful duties, nor hinder, prevent, or refuse to permit any lawful inspection or the performance of any work authorized by this Act to be done by or by authority and direction of said board."

Act of March 3, 1921, 41 Stat. 1224, ch. 118, § 24, D. C. Code, 1940 ed., Sec. 10-126: (Weights and Measures)

"There is hereby conferred upon the superintendent, his assistants and inspectors, police power, * * *. The superintendent, his assistants, and inspectors may, for the purpose of carrying out and enforcing the provisions of this chapter and in the performance of their official duties, with or without formal warrant, enter or go into or upon any stand, place, building, or premises, except a private residence, and may stop any vendor, peddler, dealer, vehicle, or person in charge thereof for the purpose of making inspections or tests. * * *"

Act of June 25, 1936, 49 Stat. 1917, ch. 802, § 10, D. C. Code, 1940 ed., Sec. 1-711: (Boiler Inspection)

"The boiler inspector and his assistants shall have the right to enter, in the performance of his

or their duties, at all reasonable hours, all premises on which a steam boiler or unfired pressure vessel is being installed, operated, or maintained, and it shall be unlawful for any person to deny admittance to any such inspector or assistant or to interfere with him or them in the performance of his or their duties."

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949.

No. 302

302

DISTRICT OF COLUMBIA, *Petitioner*,

v.

GERALDINE LITTLE, alias MILDRED PARKER, *Respondent*.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

BRIEF FOR THE DISTRICT OF COLUMBIA.

VERNON E. WEST,
Coporation Counsel, D. C.,
CHESTER H. GRAY,
Principal Assistant Corporation Counsel, D. C.,
LEE F. DANTE,
Assistant Corporation Counsel, D. C.,
EDWARD A. BEARD,
Assistant Corporation Counsel, D. C.,
Attorneys for Petitioner,
District Building,
Washington 4, D. C.

DIVISION OF PRINTING AND PUBLICATIONS—GOVERNMENT OF THE DISTRICT OF COLUMBIA

INDEX

Subject Index

Cases Cited

OTHER AUTHORITIES

STATUTES CITED

MISCELLANEOUS

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OPINIONS BELOW.

The memorandum opinion of the Municipal Court is set forth in the Transcript of Record (R. 2-5).

The opinion of the Municipal Court of Appeals is reported in 62 Atlantic 2d 874.

The opinion of the United States Court of Appeals has not been reported.

JURISDICTION.

The judgment of the United States Court of Appeals for the District of Columbia was entered on August 1, 1949 (R. 30). The petition for certiorari filed August 31, 1949, was granted November 7, 1949. Jurisdiction to issue the writ is conferred by Title 28, U. S. Code, Sec. 1254 (Act of June 25, 1948, 62 Stat. ——, Ch. 646).

STATEMENT OF THE CASE.

On September 10, 1947, an information was filed in the Municipal Court for the District of Columbia, Criminal Division, charging that the respondent, on the 9th day of September in the year A.D. 1947, in the District of Columbia, and divers others days and times between that date and the date of the filing of this information

> "* * * and on premises 1315 10th Street, northwest, did therein hinder, obstruct, and interfere with an inspector of the Health Department in the performance of his duty in carrying out the provisions of an Act of Congress the Health Regulations Contrary to and in violation of an ordinance Act of Congress Health Regulations in such case made and provided and constituting a law of the District of Columbia." (R. 1-2.)

The respondent pleaded "Not Guilty" (R. 2). Upon trial by the Court without a jury she was found guilty and was sentenced to pay a fine of $25.00 or, in default thereof, to serve a term of ten days in jail.

At the trial below the prosecution adduced testimony to establish the following facts:

An occupant of premises No. 1315 10th Street, N. W., made complaint to the Health Officer that there was an accumulation of loose and uncovered garbage and trash

n the halls of said premises and that certain of the persons esiding therein had failed to avail themselves of the oilet facilities, whereupon the Health Officer directed an nspector of the Health Department to make an inspec- ion of said premises. Accompanied by a uniformed mem- ber of the Metropolitan Police Department the uniformed ealth inspector proceeded to said premises. Upon arrival he health inspector and the police officer observed one Allen about to enter said premises. The health inspector identified himself as an inspector of the Health Department, stated the nature of his business, and asked permission of Allen to enter the premises for the purpose of making an inspec- tion. Allen refused to permit the health inspector to enter, stating that the owner of the premises was not at home (R. 8). During the discussion between the health inspector and Allen, a woman, who at that time was unknown to the health inspector or to the police officer, was standing across the street from the premises. She called to Allen not to permit the inspector to enter the premises. Thereafter this woman came across the street and up to the porch of the said premises and continued to tell Allen not to per- mit the inspector to enter the said premises for the purpose of making an inspection. The police officer asked the woman if she were the owner of the premises and upon her denial of ownership of the premises instructed her to go about her business. Allen was then informed that he was inter- fering with a health officer in the performance of his duties, and was placed under arrest. The police officer thereupon took Allen to the nearest police call box. The unidentified woman followed along protesting the right of the health inspector to enter the premises. She finally identified her- self as the owner of the premises, and demanded that she also be arrested for interfering with a health officer in the performance of his duties. She thereupon seized the health inspector's arm and attempted to grab the papers he was holding in his hand. She was then arrested.

The police officer testified substantially the same as the health inspector. On cross examination the health inspector and the police officer both testified they had no warrant or other process of court. The District of Columbia thereupon announced its case as closed (R. 9).

The respondent testified in her own behalf substantially as follows: That she came from across the street with a bundle of groceries in her hand and saw the health inspector and the police officer in front of her door talking to Allen; that she was asked if she lived at these premises and she replied that it was her private residence; that the health inspector and the police officer then demanded that she permit the health inspector to make an inspection of the premises; that she denied permission to them to enter said premises on the ground that her constitutional rights did not require her to submit to an inspection; and that after some discussion respondent and Allen were placed under arrest for interfering with a health inspector in the performance of his duties and taken to the nearest patrol box (R. 9).

The evidence adduced by the prosecution was wholly of a testimonial character and related exclusively to events occurring beyond the confines of the respondent's dwelling. No search of her dwelling was made and no demonstrative evidence was seized. No facts obtained by visual observation of the confines of her dwelling were introduced into evidence against her (R. *passim*).

The trial court took the case under advisement and, on April 10, 1948, filed a memorandum opinion holding "* * * that the Commissioners were vested with authority to enact said regulations; that the regulation in question is necessary and proper for the protection of the public health and comfort and is not in violation of any constitutional rights of the defendant * * *" and finding the defendant guilty, and thereafter imposed sentence (R. 2-5).

Upon appeal, the Municipal Court of Appeals (R. 10-15) reversed, holding that the attempt of the health officer to

inspect a private dwelling without a warrant, in the absence of an immediate danger or a dangerous nuisance per se, was an unconstitutional method of search, which was not required by the regulations. The Municipal Court of Appeals declared that:

> "* * * It may be carried out within the framework of the Constitution by obtaining a warrant. Hence we do not wish to be understood as saying that the regulation is unreasonable on its face. We express an opinion only as to its application under the present facts." (R. 14)

Upon petition of the District of Columbia, the United States Court of Appeals for the District of Columbia Circuit granted an appeal. In its decision that Court affirmed the judgment of the Municipal Court of Appeals for the District of Columbia. Although it recognized the fact that no statutory procedure exists in the District of Columbia for issuance of a magistrate's warrant to conduct an inspection of a dwelling, the United States Court of Appeals held:

> "* * * that health officials without a warrant cannot invade a private home to inspect it to see that it is clean and wholesome, or to search for garbage upon a complaint that garbage is there, or to see whether the occupants have failed to avail themselves of the toilet facilities therein." (R. 26).

In his dissenting opinion Judge Holtzoff ~~held~~ said that:

> "* * * the case is one of novel impression involving an important principle of Constitutional law and the decision may have wide implications and far-reaching consequences." (R. 28)

and declared that the Fourth Amendment does not apply to inspection in aid of the police power, if no seizure is in-

tended (R. 31), and that the right to inspect a dwelling in the interests of public safety and public health is a qualification upon the right of privacy in the home, which if reasonably exercised, is perfectly proper (R. 35).

QUESTION PRESENTED.

The question presented is whether the entry of a private dwelling without warrant by a health officer or other municipal official under reasonable conditions and circumstances of fact in the discharge of duties imposed upon him by Acts of Congress and regulations promulgated thereunder designed to protect public health, safety and welfare, is unlawful as violative of the provisions of the Fourth Amendment to the Constitution of the United States prohibiting unreasonable searches and seizures.

SPECIFICATION OF ERRORS.

The United States Court of Appeals for the District of Columbia Circuit erred:

1. In holding that the Fourth Amendment to the Constitution of the United States applies to inspections of private dwellings by health officers for the purpose of securing observance of laws enacted under the police power to the same extent that it applies to searches of persons and dwellings and the seizure of articles for use as incriminatory evidence in criminal prosecutions.

2. In holding that a private dwelling may not be inspected without a warrant, over the objection of the owner or occupant, by a health officer for the purpose of securing compliance with laws and regulations enacted and made in the exercise of the police power, in the absence of acute emergency or unavoidable crisis.

STATUTES INVOLVED.

Constitutional provisions, statutes and regulations involved and other statutes and regulations affected by the decision of the United States Court of Appeals are set forth in the Appendix.

SUMMARY OF ARGUMENT

In the exercise of the police power and within limits defined by decisions of this Court Congress has enacted legislation for the District of Columbia embodying the developments of science in the fields of public health and safety. Recognizing the danger to the public which would result from violation of these enactments, Congress adopted, again within the decisions of this Court, an enforcement policy consisting of inspection, notice to comply, and summary abatement or prosecution, or both, in the event of failure or refusal to comply.

That enforcement policy has proved its worth by abating annually literally thousands of nuisances dangerous to health and safety. That same policy is widely used in the States.

It is essential to life in a congested urban community that nuisances of the type here involved—garbage and filth—be promptly abated. Garbage attracts rats, whose bite, or the bite of the fleas which they carry, transmit endemic typhus, sylvatic plague and bubonic plague. Human excrement is the only source of typhoid fever and other enteric diseases. Inspection is the only means of discovering and abating these nuisances.

This Court has held that the Fourth Amendment applies only to criminal and quasi-criminal cases. But it does not apply to all criminal cases. Petitioner contends that the Fourth Amendment does not apply to entries without warrant under authority of valid enactments in the exercise of the police power, i.e., enactments for the protection of public health and safety. The object of such an entry is for the purpose of discovering and abating nuisances, rather than for the purpose of securing evidence upon which to procure the conviction and punishment of crime.

The decision of the United States Court of Appeals held that entries of private dwellings, even in the exercise of the police power, must be in conformity with the requirements of the Fourth Amendment. That decision necessarily will put an end to inspection in aid of the police power, since the purpose of the inspection is to ascertain what is within the dwelling and the probable cause requisite for obtaining a search warrant, even if such an "inspection warrant" were to be provided, presents an insuperable obstacle.

But even if, as the United States Court of Appeals held, the police power is in collision with the Fourth Amendment, it does not necessarily follow that the police power must give way. In many instances this Court has held that the reasonable exercise of the police power is a valid limitation upon other rights guaranteed by the Constitution.

ARGUMENT

Introduction

The District of Columbia, petitioner herein, seeks the right to continue to follow the procedure specifically approved by this Court in 1905 for protecting the public from the dangers to health inherent in garbage. In *California Reduction Company* v. *Sanitary Reduction Works*, 199 U. S. 306, 321-322, 50 L. Ed. 204, 211, 26 S. Ct. 100, this Court declared:

> "It is the duty, primarily, of a person on whose premises are garbage and refuse material, to see to it, by proper diligence, that no nuisance arises therefrom which endangers the public health. *The householder may be compelled to submit even to an inspection of his premises*, at his own expense, and forbidden to keep them, or allow them to be kept, in such condition as to create disease."

I

CERTAIN CONTAGIOUS DISEASES CAN BE PREVENTED ONLY BY CONTROLLING THEIR ORIGINS THROUGH INSPECTIONS OF PREMISES AND ABATEMENT OF DISEASE SOURCES FOUND THERE.

Before an attempt is made to apply existing legal precepts to the facts and the issues raised by this proceeding, it seems in order first to discuss development of public sanitation and of sanitary engineering with relation to corresponding developments in the law.

At the time of the adoption of the Constitution of the United States the diseases which today are recognized to be of the gravest concern to the welfare of society [1] were not yet even identified; the quarantine procedure was apparently the only known hindrance to the spread of contagious disease and, since little was known of the causes of contagion and disease, even quarantine was practiced with indifferent success.[2] The only certain method by which the spread of disease could be halted was one far too drastic for the effective progress of civilization.[3]

But in the less than two centuries transpiring since that time, milestone after milestone in the struggle against epidemic disease has been passed. In 1762 came the first suggestion of the means whereby infectious diseases spread,

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[1] Communicable Diseases. (App. 5).

[2] Mead, Dr. Richard: Short Discussion Concerning Pestilential Contagion and the Methods to Be Used to Prevent It (1720).

[3] John Simon: English Sanitary Institutions, second edition 1897, page 100, et seq. "Those endeavors to exclude by Quarantine the contagion of the Plague were as ineffectual as if their intention had been to bar out the east wind or the new moon; and, in the sanitary records of the Metropolis, the year 1665 has its special mark as emphatically the year of the Great Plague. * * * the London world was fearing what worse renewal of the pestilence might yet come, when suddenly the most drastic of sanitary reformers appeared on the scene, and what had remained of the Great Plague yielded at once to the great Disinfector. A fire—'such as had not been known in Europe since the conflagration of Rome under Nero, laid in ruins the whole city,' * * *."

but it was another century before the micro-organisms of disease ceased to be mere laboratory curiosities. (2 Encyclopaedia Britannica, 1949 Printing, p. 900). From the murk of almost total ignorance, man's knowledge of bacteriology however has today developed to such an extent that it seems fair to say that unless the ultimate decision of modern science be to devote its bacteria to the service of mankind rather than to its extermination, judgments of courts insuring the personal liberties of the citizen will become moot. In any event it is certainly true that the continued application of modern sanitary techniques to the abatement of the causes of contagious disease can guarantee to the individual a happier and more wholesome existence and a span of life which, judged through the eyes of those who lived 175 years ago, is incredible.

During this period there have been concomitant developments in the field of jurisprudence designed to keep pace with scientific progress in the field of public health. Through the years, those entrusted with the enactment of laws in aid of public health and safety have attempted to follow the advice of their scientists. The boundaries of legal development were indicated by this Court in *Jacobson* v. *Massachusetts*, 197 U. S. 11, 25, 26, 49 L. Ed. 643, 25 S. Ct. 358:

> "According to settled principles, the police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety. * * * It is equally true that the state may invest local bodies called into existence for purposes of local administration with authority in some appropriate way to safeguard the public health and the public safety. * * * A local enactment or regulation, even if based on the acknowledged police powers of a state, must always yield in case of conflict with the exercise by the general government of any power it pos-

sesses under the Constitution, or with any right which that instrument gives or secures.

"* * * This court has more than once recognized it as a fundamental principle that 'persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the state; of the perfect right of the legislature to do which no question ever was, or upon acknowledged general principles ever can be, made, so far as natural persons are concerned.' * * * *"

In this same case this Court reiterated the necessity for reevaluation of rights in the light of advancing knowledge:

"The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is, then, liberty regulated by law."

In *Dupont* v. *District of Columbia*, 20 App. D. C. 477, 487, the then Court of Appeals of the District of Columbia expressed a similar view:

"The police power is the emanation of that inborn principle of human nature which led men into society and created the body politic to which sovereignty pertains for the purpose of securing safety, order and the common weal. To effect these ends, the government is intrusted with the power to make reasonable regulations restrictive of individual impulse. As population increases in rapid proportion, new physical conditions are developed which suggest, as reasonable, regulations and restraints of person and property before unknown. As civilization advances with increased

> and deeper knowledge, science makes new discoveries in respect of the dissemination of disease through infection, which necessitate radical changes in methods for the protection of human life."

The policy of Congress to provide, locally, progressive legislation consonant with scientific advances and constitutional principles is perhaps best demonstrated by a review of the basic power and the expression of it which led to the regulation under which respondent was convicted.

The exclusive legislative authority over the District of Columbia conferred upon Congress by Article I, Sec. 8, Clause 17 of the Constitution "* * * is sweeping and inclusive in character, to the end that Congress may legislate within the District of Columbia for every proper purpose of government." *Neild* v. *District of Columbia*, 71 App. D. C. 306, 110 F. 2d 246; *National Mutual Ins. Co. of District of Columbia* v. *Tidewater Transfer Co., Inc.* 17 U.S. L. Week 4536; *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 429, 5 L. Ed. 256. It includes authority to legislate in the exercise of the police power in the District of Columbia. *District of Columbia* v. *Brooke*, 214 U.S. 138, 53 L. Ed. 941, 29 S. Ct. 560; *Kindleberger* v. *Lincoln National Bank of Washington*, 81 U.S. App. D.C. 101, 155 F. 2d 281; *Dupont* v. *District of Columbia*, 20 App. D. C. 477; *Moses* v. *United States*, 16 App. D.C. 428, 50 L.R.A. 532.

Legislating for the District of Columbia, in the exercise of the police power Congress enacted laws and authorized the promulgation of regulations designed to carry into effect the developments of science in the field of public health and safety. Thus, Congress in 1878 provided for the appointment of a Health Officer of the District of Columbia and charged that officer with the duty of enforcing all laws and regulations relating to public health (App. 3); in 1892 authorized the Inspector of Plumbing to inspect houses in the District to see that the plumbing regulations are

duly observed (App. 15); and in the same year authorized the Commissioners of the District of Columbia to make and enforce all such reasonable and usual police regulations as they might deem necessary for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia (App. 8). These Acts were followed in 1896 by the Drainage Act (App. 14) requiring connection of dwellings with public sewers and water mains; in 1899 by provision for the condemnation of unsafe buildings (App. 15); in 1904 by provision for appointment of an Electrical Inspector (App. 16); in 1905 by authority to the Commissioners to make regulations for collection and disposal of garbage (App. 9); in 1906 by creation of the Board for the Condemnation of Insanitary Buildings (App. 17); and authority to the Commissioners of the District of Columbia to abate nuisances (App. 11). In 1939 the whole broad problem of preventing and controlling the spread of communicable diseases was placed in the hands of the Commissioners of the District of Columbia and they were authorized to make and enforce regulations to that end (App. 3).

In enacting this legislation the Congress was realistic. It was mindful of the fact that laws enacted for the protection of the public health are not self-executing. As Dr. Chapin[4] said in his Foreword to the Third Edition of "Public Health Law" (Tobey):

> "Sanitarians work toward the ideal that all people will in time know what healthful living is, and that they will in time reach that moral plane when they will practice what they know. While hopeful for the millennium we must work. Law is still neces-

[4] Dr. Charles V. Chapin, author of "Municipal Sanitation in the United States", quoted extensively by this Court in *California Reduction Co. v. Sanitary Reduction Works, supra.*

> sary. People still incline to acts which are not for their neighbor's good."

Recognizing the fact that a violation of the foregoing laws and regulations promulgated thereunder could result in a condition which "unlawfully annoys or doth damage to another"—Blackstone's definition of a nuisance[3]—Congress provided for the enforcement of such laws and regulations by means suitable for the discovery and abatement of nuisances. As a part of each new enactment in this field, Congress provided for the appointment of inspectors, directly or by necessary implication authorized such inspectors to enter and examine buildings, including private dwellings, provided for service of notice to owners or occupants to correct violations found on inspection, and for summary abatement or prosecution, or both, in case of failure or refusal to comply with such notice. In some cases refusal to permit such inspection was made punishable by the Act.

It is evident that these statutes and regulations contemplate inspection of private dwellings without warrant by municipal officials under reasonable conditions of fact in aid of the police power reposed in them.

The question might well be asked, as it apparently was by the majority below: What relationship has an inspection under such conditions to the preservation of the public welfare?

A wealth of regulatory precedent throughout the United States (Brief of Amicus Curiae in support of Petition for Certiorari, p. 3) supports the view that health officers regard such inspections as vital to the protection of the public health. The courts have had few opportunities to review this question, but the quotation set forth by Judge Holtzoff, in his dissent below, from *Hubbell* v. *Higgins*, 148 Iowa 36, 46, is cogent precedent:

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[3] Lewis's Blackstone, Commentaries on the Laws of England, Book III, p. 5.

> "The power of the Legislature to provide for inspection of premises in the interest of public safety and the public health is so well established that we will not enter upon a discussion of it. The right of inspection is incidental to the police power, and counsel cite no case wherein it was ever held that the exercise of such power violates any constitutional right of the citizen."

However, the most forceful argument to establish the importance of inspection to effective and salutary discharge of the obligation to preserve the public welfare lies in the statistics showing the effect of continuous inspection upon the abatement of nuisances locally during the very same year in which this conviction was obtained.

The Annual Report of the Commissioners of the District of Columbia for the fiscal year ending June 30, 1948—the period in which this case arose— shows that thousands of inspections were made by various officers and employees of the District of Columbia, resulting in the abatement of thousands of nuisances dangerous to health and safety (App. 21).

In the field involved herein, the Commissioners' Report shows that the Bureau of Public Health Engineering made 24,626 original inspections and 34,786 reinspections, which resulted in the abatement of 21,773 nuisances. Of those nuisances 7,565 consisted of rubbish and garbage. It is significant that only 1,019 *complaints* were received of rubbish and garbage (App. 27). Inspections necessarily revealed the remainder. The same situation prevailed in the rodent control program. While *complaints* of rats and mice totalled 1,355, harborage removal was accomplished in 3,363 cases and 7,515 locations were gassed, baited and trapped.

In controlling the spread of communicable diseases, the results of the enforcement policy of Congress are best demonstrated. The report of the Bureau of Preventable Diseases shows that 6 cases of typhoid fever were reported. The report on Typhoid Fever is:

> "A total of six cases with no deaths were reported in 1947, which constitutes the lowest incidence on record in the District of Columbia and the first year in which there were no deaths from this disease."

Obviously, this result was not achieved by inspection alone. Equally obvious is the fact that this result would not have been achieved without inspection, followed by abatement of the nuisances which are the breeding ground of that disease.

In the field of safety, the figures on Fire Prevention are impressive. Out of a total of 132,348 fire prevention inspections, 14,769 fire hazards were discovered and ordered abated (App. 24).

The direct relationship between the number of fires and inspections to detect fire hazards is demonstrated by the work of the Cincinnati Fire Department in drastically reducing the number of dwelling fires through stepped-up inspections of private dwellings. This report, including tabulations of inspections and fires over a twelve year period, is set forth in the Appendix, pp. 39-41.

The additional question might be asked: What relationship has inspection of *garbage* under such conditions to the preservation of the public welfare?

The court below compared the proposed inspection of respondent's dwelling with the possible invasion of a home during "the evening radio hour" by the over-zealous health inspector for the purpose of "* * * making bacteria counts on dinner dishes in the kitchen sink." The court then said: "These are extreme examples, perhaps, but they are no *sillier* than the precise words of the complaint in the present case, and we are dealing with doctrines and not with the presumable taste and sense of individual officials." (Emphasis supplied.)

It is apparent from this statement that the significance of the relationship between an accumulation of loose and uncovered garbage and fecal matter and the preservation of public health was not fully appreciated by that court.

The complaint upon the basis of which the health officer had sought entry for purpose of inspection alleged two conditions, the first of which was "an accumulation of *loose* and *uncovered garbage* and trash in the halls of said premises (R. 8, 17). (Emphasis supplied.)

Garbage, of course, in and of itself, constitutes a nuisance due to the odors emanating therefrom. *Dupont* v. *District of Columbia, supra.* But the danger to the health of the general public does not rest upon odor.

Garbage is an essential element to rat life in a congested urban community.

> "* * * Proper disposal of garbage will keep down the rat population. Rat killing is not a successful technique. The rat population is in direct ratio to available food. Thus rat eradication depends in great part upon limitation of the rodent's food supply." Smillie, Preventive Medicine and Public Health (The MacMillan Company, 1946) p. 312.

> "* * * the garbage from the apartments frequently overflowed the dilapidated uncovered containers furnished by the landlord to the tenants, and spilled upon the floor. * * * As a result of this deplorable situation, many large and bold rats, often four or five at a time, were observed in the cellars each time the tenants descended to dispose of their garbage and trash.
>
> "* * * the evidence showed that rats congregate only where there is available food." *State of Maryland*, for use of *Pumphrey* v. *Manor Real Estate & Trust Co., et al.*, 176 F. 2d 414, 415, 416 (Aug. 2, 1949).

Without rats, mankind would be freed from endemic typhus and plague. Smillie tells us that

> "Murine typhus is an endemic disease of rats and is transmitted to man by the bite of the rat flea. * * *" (*Op. cit. supra*, at 308.)

and that plague, the Black Death of Europe in the fourteenth century, and the bubonic plague and sylvatic plague of today, is transmitted to man by the bite of the rat flea that has been infected by biting an infected rodent. (*Id.* at 311-312.)

Nor are plague and typhus diseases of the past—except insofar as advancements in the science of medicine and sanitation have reduced the rates of death and of infection—for Smillie, writing in 1946, said that sylvatic plague had become so firmly established among rodents in the Rocky Mountain area that

> "* * * the danger of spread of sylvatic plague to the large urban centers of the middle west is very real." (*Id.* at 312.)

and a case of typhus in the District of Columbia was officially reported to the Health Department during the fiscal year ending June 30, 1948. (Report of the Commissioners, D. C., Bureau of Preventable Diseases, p. 177, App. 21, 25). Only this past August the Fourth Circuit Court of Appeals directed the entry of judgment against the United States of America, under the Federal Tort Claims Act, for wrongful death due to typhus contracted in Baltimore from the bite of a rat flea, because the United States

> "* * * was *negligent in failing* to make the repairs to rid the cellars of the rats and in failing to furnish sufficient janitor service *to keep the garbage in covered receptacles outside the houses* * * *". *State of Maryland, etc.* v. *Manor Real Estate & Trust Co., et al., supra, at* 417. (Emphasis supplied.)

The second phase of the complaint, that "certain of the persons residing therein had failed to avail themselves of the toilet facilities", though couched in euphemistic terms, nevertheless clearly conveyed the thought that human ex-

crement was scattered about in such manner that inspection would reveal it.

Human excrement, specifically the feces, constitutes the *only source* from which the numerous enteric infections may be acquired. Whether it be the bacilli of typhoid or of bacillary dysentery, or the intestinal parasites of hookworm, of pinworm, of tapeworm, or of amebic dysentery, the bacilli and the parasites pass directly from the infected human in his feces. The methods whereby the bacilli or parasite reach other humans and infect them, are numerous, and vary with the type of bacillus or parasite. The fly may carry the typhoid bacillus to food or drink, while the hookworm penetrates the human skin; the tapeworm usually reaches the human stomach in raw beef from cattle that have swallowed infected human feces. (Smillie, *op. cit. supra,* at 250-264.) Is it a stretch of the imagination to visualize human excrement which has been deposited outside the toilet being tracked by shoes to other parts of the house, even to other houses, and there picked up by children playing upon the floors?

Again and again Smillie tells us that proper disposal of human feces is the means to control these diseases.

> "Typhoid fever has now almost entirely disappeared from large municipalities and is declining rapidly in rural areas. Within fifty years an annual death rate of 30 per 100,000 population has been reduced more than a hundredfold to less than 0.3. There has been no corresponding decrease in virulence of the organism. This decline has resulted from an increased knowledge of the epidemiology of the disease and vigorous prosecution of control measures. Thus, typhoid fever need not be given much emphasis in clinical medicine, but must be given very serious consideration in preventive medicine, since it remains as a potential menace that must be kept under continuous surveillance. The typhoid bacillus has a worldwide distribution, and wherever proper control measures

are not carried out fully, and intelligently, the disease is sure to appear. Typhoid fever is one of the easiest to control of all the important infectious diseases. Man is its only host. The organism is spread to others through transfer of infected human feces." (*Id.* at 251).

"* * * Sanitation of the environment, with provision for proper disposal of human feces, is, as in typhoid fever, the key to control [of bacillary dysentery]. * * *" (*Id.* at 257.)

"Prevention of infection [from the large intestinal worm *Ascaris lumbricoides*] is simple in theory, difficult in practice. It is based upon the proper disposal of human feces." (*Id.* at 260.)

"Prevention of amebic dysentery is almost entirely the responsibility of the public health authorities. Improvement of sanitation, prevention of fly breeding, promotion of clean handling of food, and all other general measures that prevent the pollution of articles of human consumption by human feces, will aid in bringing the disease under control. * * *" (*Id* at 263).

Based upon the foregoing, the District of Columbia fails to see wherein the complaint made concerning respondent's premises was silly, as described by the majority of the United States Court of Appeals. (R. 24.)

The foregoing propositions underlay the testimony of the Surgeon General of the United States Public Health Service before a subcommittee of the Senate Committee on Banking and Currency, on February 11, 1949, in support of housing legislation (App. 33) (compare Housing Act of 1949, Public Law 171, 81st Congress, 1st Session, Chap. 338 approved July 15, 1949), wherein he traced the relationship between private inside flush toilets and the attack rates for enteric diseases.

Is the attack on community disease to end with the provision of sanitary facilities? (This Court has upheld the right of the District of Columbia, and other municipalities,

to compel dwellings to be equipped with sanitary facilities and be connected to the public sewer. *District of Columbia v. Brooke, supra; Hutchinson v. Valdosta*, 227 U.S. 303, 33 S. Ct. 290, 57 L. Ed. 520.) Must the health officer wait until he receives a complaint under oath which he can present to a magistrate, before he is permitted to see whether these facilities are being used? This Court did not say, in *Jacobson v. Massachusetts, supra*, merely that a healthy citizen might be required to accept into his keeping an original container of smallpox vaccine, but upheld the right of the state *to compel its use*, through innoculation by a physician, even against a contention that personal rights were invaded. Are property rights more sacred than personal rights?

One hundred years ago Lemuel Shattuck, whose report to the Massachusetts State Legislature "has become a foundation stone for public health and preventive medicine in America" (Smillie, *op. cit. supra*, ix), pointed out the need for determining the *causes* of diseases which were taking a dreadful toll in human lives, and for taking effective means to remove such causes: (App. 30)

> "* * * If the same exact and definite information could be obtained, as to the causes of cholera, dysentery, scarlatina, typhus, consumption, and other grave diseases, to which we are subject, and as to the particular condition of the individual which they most easily affect, how much might be done for the avoidance of those diseases by the removal of their causes! How many lives might be saved, how much suffering might be prevented! Does not the spirit of the age then demand the approval of a measure which promises to do this great,—most important work!" Shattuck, Report of a General Plan for the Promotion of Public and Personal Health, the Sanitary Commission of Massachusetts, 1850 (Harvard University Press, 1948) 276.

Today, when we have the knowledge of the causes of many of the diseases mentioned by Shattuck, and have established their sources in human excrement and in rats, and established the relationship of garbage to rats, are not the following prophetic words of Lemuel Shattuck applicable to the case presently before this Court?

> "* * * If we, as social beings, make no effort to elevate the sanitary condition of those around us by removing the causes of disease, we violate a known duty, and make ourselves justly guilty and liable to punishment; and we shall inevitably be punished, either by suffering sickness, or by death, or in some other way. If a municipal or state authority neglects to make and execute those sanitary laws and regulations on which the health and life of the people depend, they violate a known duty, and are justly chargeable with guilt and its consequences; * * * May it not then appear that many a law-maker, many a public administrator, and many a private individual, has been guilty of robbing others, and of robbing himself, of health and of life,—all that is dear on earth;—guilty of murders and of suicides;—and none the less fearfully real and punishable because they were unintended? * * * " (Id. at 277, App. 31).
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> "* * * And it is the duty of the State to extend over the people its guardian care, that those who cannot or will not protect themselves, may nevertheless be protected; and that those who can and desire to do it, may have the means of doing it more easily. This right and authority should be exercised by wise laws, wisely administered; and when this is neglected the State should be held answerable for the consequences of this neglect. If legislators and public officers knew the number of lives unnecessarily destroyed, and the suffering unnecessarily occasioned by a wrong movement, or by no movement at all, this great matter would be more carefully studied, and errors would not be

so frequently committed. * * *" (Id. at 304, App. 32).

Many courts of the United States have subscribed to the view that garbage is potentially a grave menace to the welfare of the community; among them, suprisingly enough, the Court of Appeals of the District of Columbia, which in 1902 stated in *Dupont* v. *District of Columbia, supra*:

> "Garbage * * * is a thing of almost hourly accumulation in every occupied house of a large city, and is therefore a constant menace to the health and comfort of thousands of people."

In 1905, in *California Reduction Company* v. *Sanitary Reduction Works*, 199 U. S. 306, 322, 50 L. Ed. 204, 211, 26 S. Ct. 100, this Court in upholding the validity of garbage regulations of San Francisco, held that:

> "* * * The garbage and refuse matter were all together, on the same premises, and, as a whole or in the mass, they constituted a nuisance which the public could abate or require to be abated, and to the continuance of which the community was not bound to submit."

And, at the same term, in *Gardner* v. *Michigan*, 199 U. S. 325, 50 L. Ed. 212, 26 S. Ct. 106, this Court, again dealing with the validity under the Fourteenth Amendment of garbage ordinances, cited with approval the opinion of the Court of Appeals in *Dupont* v. *District of Columbia, supra*.

In summary then, it seems clear that until the opinion below, the informed viewpoint was that the Congress properly directed and authorized inspection of dwellings without warrant as a necessary means of saving the populace harmless from the ravages of infectious disease directly attributable to the two nuisances complained of in this case.

The opinion of the United States Court of Appeals for the District of Columbia can have no other effect than to strike

down all such inspections on the sole ground that they are violative of the Fourth Amendment of the Constitution.

The issue is whether the opinion is erroneous.

II

THE FOURTH AMENDMENT WAS NOT INTENDED TO, AND DOES NOT, APPLY TO INSPECTION ENTRIES OF PREMISES FOR THE PRESERVATION OF THE PUBLIC HEALTH OR SAFETY.

In his dissenting opinion Judge Holtzoff said:

> "The Fourth Amendment was intended and is to be construed to apply only to criminal prosecutions and proceedings of a quasi-criminal nature for the enforcement of penalties. Its purpose is to limit and regulate searches conducted with a view to discovering and seizing books, papers, and objects to be used as evidence in a criminal proceeding or in an action for the enforcement of a penalty; and to protect any person against the use of evidence in a criminal or penal proceeding, if it has been procured from him by an unreasonable search and seizure. It does not affect the administration of law if criminal prosecutions or suits for penalties are not involved. It does not apply to inspections, if no seizure is intended." (R. 31.)

Petitioner is wholly in accord with the conclusions of Judge Holtzoff and the reasons which he set forth in his opinion to support such conclusions. Petitioner relies upon the argument and cases cited by Judge Holtzoff, but for the sake of brevity has not repeated them in this brief.

The historical background of the Fourth Amendment contained in the opinion of this Court in *Boyd* v. *United States*, 116 U. S. 616, 29 L. Ed. 746, provides the rationale for the rule that the Amendment applies only to

criminal cases. In that case Mr. Justice Bradley, writing for the Court, quoted at length from the judgment of Lord Camden holding invalid general search warrants, in *Entick v. Carrington,* 19 Howell St. Tr., 1029, in part as follows:

> "The great end for which men entered into society was to secure their property. That right is preserved sacred and incommunicable in all instances where it has not been taken away or abridged by some public law for the good of the whole. The cases where this right of property is set aside by positive law are various. Distresses, executions, forfeitures, taxes, etc., are all of this description, wherein every man by common consent gives up that right for the sake of justice and the general good. By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my license but he is liable to an action though the damage be nothing; which is proved by every declaration in trespass where the defendant is called upon to answer for bruising the grass and even treading upon the soil. If he admits the fact, he is bound to show by way of justification that some positive law has justified or excused him. The justification is submitted to the judges, who are to look into the books and see if such a justification can be maintained by the text of the statute law or by the principles of the common law. If no such excuse can be found or produced, the silence of the books is an authority against the defendant and the plaintiff must have judgment. According to this reasoning, it is now incumbent upon the defendants to show the law by which this seizure is warranted. If that cannot be done, it is a trespass. * * * (116 U.S. 616, 627).
>
> "After a few further observations, His Lordship concluded thus: 'I have now taken notice of everything that has been urged upon the present point; and upon the whole we are all of opinion that the warrant to seize and carry away the party's

papers in the case of a seditious libel is illegal and void.'" (*Id.* at 629).

This Court said of the judgment in *Entick* v. *Carrington*

> "As every American statesman, during our revolutionary and formative period as a nation, was undoubtedly familiar with this monument of English freedom, and considered it as the true and ultimate expression of constitutional law, it may be confidently asserted that its propositions were in the minds of those who framed the Fourth Amendment to the Constitution, and were considered as sufficiently explanatory of what was meant by unreasonable searches and seizures. * * *" (*Id.* at 626-627).

Thus, at common law "every invasion of private property, be it ever so minute, is a trespass", but entry under "some public law for the good of the whole", was justification and a valid defense to an action of trespass based upon the entry. The entry, considered by Lord Camden, "to seize and carry away papers in the case of a seditious libel" which was "illegal and void", was a proceeding having as its sole object the apprehension and punishment of the author of the libel. It was this type of entry which could receive no justification from any public law, and left the entrant a naked trespasser.

It is not strange, then, that this Court held that

> "As, therefore, suits for penalties and forfeitures, incurred by the commission of offenses against the law, are of this quasi criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment of the Constitution * * *." (*Id.* at 634)

because the penalty or forfeiture, though through civil proceedings, was as surely a punishment for the offense against

the law as would have been a fine imposed after conviction upon indictment, and the entire proceeding was for suppression of crime and the punishment of the criminal; the search had as its sole object the securing of evidence to prove the crime and insure the criminal's punishment.

But these were not the objects in the cases which were cited by Judge Holtzoff, in his dissenting opinion, as illustrations of non-criminal cases in which the Fourth Amendment was not applicable. This was the distinguishing feature.

In *Blackmer* v. *United States,* 284 U. S. 421, fines and costs, to be satisfied out of property of petitioner which had been seized by order of the court, had been imposed upon Blackmer for his failure to respond to subpoenas served upon him in France and requiring him to appear as a witness at a criminal trial in the Supreme Court of the District of Columbia. The action was taken pursuant to authority of the Act of July 3, 1926, 44 Stat. 835, which authorized issuance of subpoenas to witnesses in criminal cases who were citizens of the United States but were outside the territorial limits, and required personal service upon them by the American consul; upon failure to appear in response to the subpoena, the Act authorized issuance of an order to show cause why they should not be held in contempt, which order was also required to be personally served, after which a hearing, by the same court which had issued both subpoena and order, was required and, upon proof of the charge, penalty could be imposed. In the opinion sustaining the fines and the method of their satisfaction, this Court said, at pages 440 and 441:

> "* * * The further contention is made that, as the offense is a criminal one, it is a violation of due process to hold the hearing, and to proceed to judgment, in the absence of the defendant. The argument misconstrues the nature of the proceeding. 'While contempt may be an offense against the law and subject to appropriate punishment, certain it

is that since the foundation of our government proceedings to punish such offenses have been regarded as *sui generis* and not "criminal prosecutions" within the Sixth Amendment or common understanding.' *Myers* v. *United States*, 264 U. S. 95, 104, 105. See, also, *Bessette* v. *Conkey Co.*, 194 U. S. 324, 336, 337; *Michaelson* v. *United States*, 266 U. S. 42, 65, 66; *Ex parte Grossman*, 267 U. S. 87, 117, 118. The requirement of due process in such a case is satisfied by suitable notice and adequate opportunity to appear and to be heard. Cf. *Cooke* v. *United States*, 267 U. S. 517, 537. * * *

"*Second. What has already been said also disposes of the contention that the statute provides for an unreasonable search and seizure in violation of the Fourth Amendment.* It authorizes a levy upon property of the witness at any place within the United States in the manner provided by law or rule of court for levy or seizure under execution. A levy in such a manner, either provisionally or finally, to satisfy the liability of the owner is not within the constitutional prohibition." (Emphasis supplied.)

To reach the result that the Fourth Amendment was not violated by the seizure of Blackmer's property, out of which the fine was satisfied, it was not necessary to hold that the proceeding was *sui generis* and therefore not a "criminal prosecution" within common understanding, because even if the contempt be called a crime the seizure was not for the purpose of securing evidence of this crime, nor of the fruits of this crime, nor of the tools or implements by which this crime was committed—it had no relation to the apprehension or successful prosecution of the criminal.

As we conceive the rule deducible from the foregoing authorities, it is: A law or regulation purporting to authorize the invasion of premises without a search warrant for the purpose of securing evidence of a crime committed or supposed to have been committed, or of securing the fruits

of the crime, or of securing the tools or implements by which the crime was committed, having as its objective the punishment of the criminal, at common law would have been illegal and void, no justification for trespass, and therefore an unreasonable search and seizure within the meaning of the Fourth Amendment. On the other hand, a law or regulation which authorizes the invasion of premises without a search warrant for the purpose of securing or compelling the correction of a condition dangerous to the public health or safety, and not having as its object the securing of evidence of crime in order to punish the criminal, does provide justification for what would otherwise be trespass, as a "public law for the good of the whole", and is therefore not within the inhibitions of the Fourth Amendment.

The regulation under which the health inspector in this case sought to enter respondent's dwelling was of this latter class. It was enacted by the Congress in the exercise of the police power to protect the health of the community, and had as its purpose, not the prosecution of respondent but the correction of a condition which it had denominated, under decisions of this Court, a nuisance. If that nuisance were found to exist in respondent's premises, prosecution would not necessarily have followed. Under the Nuisance Act (App 11-14) the District authorities could have entered and summarily abated the nuisance and charged the cost of abatement against the property. Even a criminal prosecution for failure to abate a nuisance after notice to do so would not have as its object the assessment and collection of a fine, but the promotion of the public health (*District of Columbia* v. *Brooke*, 29 App. D. C. 563, 569) and is a proper method of procuring such abatement (*District of Columbia* v. *Brooke*, 214 U.S. 138, 152).

The question whether, upon a prosecution for failing to abate a nuisance after service of notice to do so, the evidence obtained by the inspection would have been excluded under the doctrine of *Weeks* v. *United States*, 232 U. S. 383,

58 L. Ed. 652, 34 S. Ct. 341, is not before the Court. In the instant case no entry was effected; no evidence was obtained by seizure or by visual observation; no evidence obtained as a result of any inspection was introduced or sought to be introduced in evidence against respondent. Respondent was convicted, not of maintaining a nuisance, but of resisting the entry of the health inspector.

Petitioner's position is that the Congress could validly authorize the entry of the dwelling for the purpose of inspection. Since the proposed inspection was for a purpose not inhibited by the Fourth Amendment, the proposed entry would have been lawful and respondent could not lawfully invoke the doctrine of self-help to resist that lawful entry.

III

DECISIONS OF THIS COURT SUPPORT THE POLICE POWER EXERCISE OVER CONSTITUTIONAL OBJECTIONS.

The majority of the Court of Appeals recognized that the proposed inspection by the health inspector was in exercise of the "police power", but declared that

> "* * * health laws are enforced by the police power and are subject to the same constitutional limitations as are other police powers. It is wholly fallacious to say that any particular police power is immune from constitutional restrictions" (R. 27)

and held that the Fourth Amendment applies (R. 19) and therefore all the warrant requirements thereof were applicable.

In this view of the Court of Appeals, the present case is an instance of a head-on collision between a constitutional provision and an attempted exercise of the "police power",

when used in the peculiar sense of that inherent power of the state exercised to preserve the public health, safety and welfare. Nor is it the first case in which such collision has occurred. Nor has this Court universally held that the "police power" must bow before the constitutional provision which was invoked to stay its action, as the Court of Appeals has implied.

In *Nebbia* v. *New York*, 291 U.S. 502, 524, this Court, in upholding the conviction of a storekeeper for selling milk at a price below that allowed by an order promulgated by a state board pursuant to statutory authority, held respecting the exercise of the police power:

> "* * * Touching the matters committed to it by the Constitution, the United States possessses the power, as do the states in their sovereign capacity touching all subjects jurisdiction of which is not surrendered to the federal government, as shown by the quotations above given. These correlative rights, that of the citizen to exercise exclusive dominion over property and freely to contract about his affairs, and that of the state to regulate the use of property and the conduct of business, are always in collision. No exercise of the private right can be imagined which will not in some respect, however slight, affect the public; no exercise of the legislative prerogative to regulate the conduct of the citizen which will not to some extent abridge his liberty or affect his property. But subject only to constitutional restraint the private right must yield to the public need.
>
> "The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law

shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of busines, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts"

In numerous other cases this Court has held that the particular constitutional provision invoked either did not apply, or that the police power exercise was a proper limitation upon the right granted by the constitutional provision. *Mugler* v. *Kansas*, 123 U.S. 623; *Lawton* v. *Steele*, 152 U.S. 133; *Jacobson v. Massachusetts*, 197 U.S. 11; *California Reduction Co.* v. *Sanitary Reduction Works*, 199 U.S. 306; *Manigault* v. *Springs*, 199 U.S. 473; *District of Columbia* v. *Brooke*, 214 U.S. 138; *Eubank v. Richmond*, 226 U.S. 137; *Hutchinson* v. *City of Valdosta*, 227 U.S. 303; dissenting opinion of Brandeis, J. in *Adams* v. *Tanner*, 244 U.S. 590; *Calhoun* v. *Massie*, 253 U.S. 170; *Block* v. *Hirsh*, 256 U.S. 135; *Gitlow* v. *New York*, 268 U.S. 652; *Miller* v. *Schoene*, 276 U.S. 272; *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379; *Queenside Hills Realty Co.* v. *Saxl*, 328 U.S. 80.

It is petitioner's position that a similar adjustment must be made in the instant collision between the exercise of the police power in protection of the public health and safety, and the guarantees of the Fourth Amendment of the Constitution.

While no case has been found in which the bar of this Amendment has been raised to stay the exercise of the "police power" to protect the public health and safety (which would appear to demonstrate that such entries and inspections in aid of health laws intended to protect the

* *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365;

public from disease and epidemic "have never been thought to raise any Constitutional problem", see *Chaplinsky* v. *New Hampshire*, 315 U.S. 568, 571), this Court has, in at least several cases, upheld statutes or ordinances which necessarily required "inspection entries" and "searches" of private premises to determine whether the statute or ordinance had been complied with.

This Court, in *District of Columbia* v. *Brooke, supra*, upheld the Drainage Act of the District of Columbia against constitutional attack. That Act required certain lots to be connected to the public sewer and public water main and the work to be done in accordance with the regulations governing plumbing and house drainage in the District (214 U.S. at 140). The lots involved were improved by dwellings (Id. at 149). It would manifestly be impossible for the municipal authorities to determine whether the connection to the public sewer and water main had been made

> "* * * in such manner that any and all of the drainage of such lot, whether water or liquid refuse of any kind shall flow into said sewer." (App. 14)

as required by the statute, without entering the dwelling to inspect the work. And this court pointed out that performance of the statutory duties of the lot owners could be compelled by criminal prosecution (214 U.S. at 152). The decision was cited with approval in *Hutchinson* v. *City of Valdosta, supra.*

Miller v. *Schoene*, 276 U.S. 272, upheld a Virginia statute aimed at the eradication of cedar rust by the condemnation and destruction of infected red cedar trees. This statute required the state entomologist, under certain conditions, "to make a preliminary investigation of the locality . . . to ascertain if any cedar tree or trees . . . are the source of, harbor or constitute the host plant for the said disease

. . ." The state entomologist could not perform this duty without making a close examination of individual cedar trees and, when such trees might grow within the curtilage (unless the Fourth Amendment does not extend to the boundary of the curtilage) he would be required to *enter and search* in the performance of his duty.

In fact the Court of Appeals has, since its judgment in the instant case, declared emphatically that the Act for the Condemnation of Insanitary Buildings (App. 17-18) was "a constitutional act", although this Act expressly provided:

> "* * * Said Board, the members thereof, and all persons acting under its authority, may, between the hours of 8 o'clock antemeridian and 5 o'clock postmeridian, peaceably enter into and upon any and all lands and buildings in said District for the purpose of inspecting the same. * * *"

and prohibits refusal to permit lawful inspections and interference with members of the Board or others acting under their authority, with penalties annexed for any violation of the Act. *Minnie Keyes* v. *K. E. Madsen, et al.*, U.S. App. D.C., No. 9969, decided December 16, 1949.

The fact that this Court has sustained the exercise of the police power over the constitutional objection, does not mean that the police power is subject to no restraints, for it has always been subject to the rule of reasonableness, that is, that the object to be attained is reasonably within the power of the state and that the means used have a real and substantial relation to the accomplishment of such object—and always, that the activities be carried out in a reasonable manner. This rule of reasonableness is a requirement of due process, *Nebbia* v. *New York, supra,* and since this Court has held the search and seizure provisions of the Fourth Amendment encompassed within due process, *Wolf* v. *Colorado,* 17 Law Week 4638, the measure of what is reasonable under the Fourth Amendment should be the same as under the Fifth and Fourteenth Amendments.

* *Wolf v. Colorado*, 338 U.S. 25

As has been shown in Part I of this argument, the existence of loose and uncovered garbage and human excrement upon the floors of a dwelling constitutes a direct hazard to the general health—even lives—of the community. The elimination of this condition is, therefore, a proper object for the exercise of the police power. Compare *Hutchinson* v. *City of Valdosta, supra.* It would appear evident, from a consideration of the results which can flow from the existence of such condition, that the minimum activity which is *necessary* to discover and abate such condition is a reasonable exercise of the police power.

While the invited visitor, or the deliveryman or postman lawfully on the premises, may observe this filthy condition if it is in the entry hall or the living room ("public"), and be urged by his innate sensibilities or by consideration for the neighbors to make sworn complaint of the actual existence of such filth, those portions of the house normally visited only by the "lone housewife" ("hidden") will scarcely be complained of. Only if this filth is "public" could probable cause be established sufficient to obtain a magistrate's warrant to authorize a health inspector's search. The "hidden" filth would continue to exist. But the effect of the filthy condition upon the public health will not be measured by its location within the dwelling, whether it be "public" or "hidden".

It follows, necessarily, that if inspection without such probable cause as will support a magistrate's warrant is the only means to discover and to abate "hidden" filth, equally dangerous to health, such an inspection has a real and substantial relationship—is even necessary—to the accomplishment of the police power objective, and is therefore permissible, despite alleged infringement of the Fourth Amendment.

> "* * * The police power may be exerted in the form of state legislation *where otherwise the effect may be to invade rights guaranteed by the Fourteenth*

> *Amendment* only when such legislation bears a real and substantial relation to the public health, safety, morals, or some other phase of the general welfare." *Liggett Co.* v. *Baldridge*, 278 U.S. 105, 111-112. (Emphasis supplied.)

The Fourth Amendment can no more be considered a privilege to conceal upon private premises filth which directly endangers the health of the community, than can the First Amendment be considered a privilege to arise in a crowded theatre and cry "Fire". *Schenck* v. *United States*, 249 U.S. 47, 52.

The Court of Appeals, in holding that the Fourth Amendment prevents the municipality from protecting the public health by means of "inspection entries" without search warrants, seems to require that now

> "* * * we must consider the two objects of desire, both of which we cannot have, and make up our minds which to choose." Mr. Justice Holmes, dissenting in *Olmstead* v. *United States*, 277 U.S. 438, 470.

Were the choice solely between the interest of privacy and the interest of bringing criminals to trial and punishing all those guilty of misdemeanors (see Mr. Chief Justice, then Associate Justice, Vinson, in *Nueslein* v. *District of Columbia*, 73 U.S. App. D.C. 85, 90, 91, 115 F. 2d 690, 695-696) petitioner would not be here before this Court. But the choice in the instant case is between the interest of privacy and the interest of preserving the lives and health of the citizens of the District of Columbia.

It is submitted, therefore, that the Fourth Amendment does not prohibit an inspection or a search, without a warrant, of private premises by the health inspector or other officer in the enforcement of laws intended to protect and preserve the public health and safety.

This construction, contended for by petitioner, does not mean that the householder must always open his door when-

ever an official raps and claims to be a health inspector. The Court of Appeals expressed these fears:

> "Is the evening radio hour to be at the whim of a zealous officer making bacteria counts on dinner dishes in the kitchen sink? Is the informality of a lone housewife doing the morning chores to be embarrassed by the unpreventable company of a benign, but nevertheless strange, searcher for the unclean and the unwholesome?" (R. 24)

and declared that the only way to prevent their materialization was to raise the bar of the Fourth Amendment to deny him entry unless he possess a search warrant issued by a magistrate (R. 22), upon probable cause and supported by oath or affirmation. (App. 1)

Petitioner replies that the rule of reasonableness is applicable, and that the answers to the questions of the Court of Appeals will depend upon all the facts and circumstances of the particular case. With a virulent epidemic raging, the bacteria count and the search for the unclean and unwholesome might well be urgent; while in the absence of such circumstances these activities could be carried on at other hours, or after advance notice and making an appointment with the "lone housewife."

Nowhere in the record is there any intimation that respondent claimed that the health inspector had made any unreasonable demand, other than his demand to inspect the dwelling without producing a warrant.

We submit that the health inspector was not required to obtain a warrant to inspect respondent's premises in his effort to carry out duties imposed upon him by the Regulations of the Commissioners, as well as Acts of Congress, which had as their object the protection of the health of the community; and respondent's acts of hindering and interfering with the health inspector were unjustified, and her conviction of such charge was proper.

IV

CONCLUSION

It is respectfully submitted that the judgment of the United States Court of Appeals for the District of Columbia Circuit should be reversed, and the judgment of the trial court affirmed.

VERNON E. WEST,
Corporation Counsel, D. C.,

CHESTER H. GRAY,
Principal Assistant Corporation Counsel, D. C.,

LEE F. DANTE,
Assistant Corporation Counsel, D. C.,

EDWARD A. BEARD,
Assistant Corporation Counsel, D. C.,
Attorneys for Petitioner,
District Building,
Washington 4, D. C.

INDEX

CONSTITUTION OF THE UNITED STATES

STATUTES

TEXTS

MISCELLANEOUS

APPENDIX.

Provisions of Constitution.

Article 1, Section 8, Clause 17 of the Constitution provides:

> "*The Congress shall have power* * * * To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, * * *."

The Fourth Amendment to the Constitution provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Search Warrants.

Act of March 3, 1901, 31 Stat. 1337, ch. 854, § 911; and of April 5, 1938, 52 Stat. 199, ch. 72, § 3; (D. C. Code, 1940 ed., Section 23-301):

> "Upon complaint, under oath, before the police court, or a United States commissioner, setting forth that the affiant believes and has good cause to believe that there are concealed in any house or place articles stolen, taken by robbers, embezzled, or obtained by false pretenses, forged or counterfeited coins, stamps, labels, bank bills, or other

instruments, or dies, plates, stamps, or brands for making the same, books or printed papers, drawings, engravings, photographs, or pictures of an indecent or obscene character, or instruments for immoral use, or any gaming table, device, or apparatus kept for the purpose of unlawful gaming, or any lottery tickets or lottery policies, or any book, paper, memorandum, or device for or used in recording any bet or deposit of money or thing or consideration of value received for any share, ticket, certificate, writing, bill, slip, or token in any pool or lottery or as a wager on or in connection with any race, game, contest, election, or other gambling transaction or device of an unlawful nature as defined in sections 22-1501, 22-1503, 22-1504, 22-1505, 22-1507, 22-1508, particularly describing the house or place to be searched, the things to be seized, substantially alleging the offense in relation thereto, and describing the person to be seized, the said court or United States commissioner may issue a warrant either to the marshal or any officer of the Metropolitan Police commanding him to search such house or place for the property or other things, and, if found, to bring the same, together with the person to be seized, before the police court or United States commissioner issuing said warrant, as the case may be.

"The said warrant shall have annexed to it, or inserted therein, a copy of the affidavit upon which it is issued, and may be substantially in the form following:

"'Whereas there has been filed before..... an affidavit, of which the following is a copy (here insert). These are therefore to command you to enter (here describe the place) and there diligently search for the said articles, goods, or chattels in the said affidavit described, and that you bring the same, or any part thereof, found on said search and also the body of ..... before the police court, or United States commissioner, as the case may be, to be dealt with and disposed of according to law.'"

Organic Act of District of Columbia—Health Officer.

Act of June 11, 1878, 20 Stat. 102, ch. 180, (Organic Act of the District of Columbia):

"Sec. 8. That in lieu of the board of health now authorized by law, the Commisioners of the District of Columbia shall appoint a physician as health-officer, whose duty it shall be, under the direction of the said Commissioners, to execute and enforce all laws and regulations relating to the public health and vital statistics, and to perform all such duties as may be assigned to him by said Commissioners; and the board of health now existing shall, from the date of the appointment of said health officer, be abolished.

"Sec. 9. That there may be appointed by the Commissioners of the District of Columbia, on the recommendation of the health-officer, a reasonable number of sanitary inspectors for said District, not exceeding six, to hold such appointment at any one time, of whom two may be physicians, and one shall be a person skilled in the matters of drainage and ventilation; and said Commissioners may remove any of the subordinates, and from time to time may prescribe the duties of each; and said inspectors shall be respectively required to make, at least once in two weeks, a report to said health-officer, in writing, of their inspections, which shall be preserved on file; and said health-officer shall report in writing annually to said Commissioners of the District of Columbia, and so much oftener as they shall require."

Communicable Diseases.

Act of August 11, 1939, 53 Stat. 1408, Ch. 691, *as amended* August 8, 1946, 60 Stat. 921, ch. 871, Secs. 1, 8 and 9 (D. C. Code, 1940 ed., Supp. VI, Secs. 6-118, 6-119f, 6-119g):

"The Commissioners of the District of Columbia are hereby authorized and empowered to promulgate and enforce all such reasonable rules and regulations as they may deem necessary to prevent and control the spread of communicable and preventable diseases in the District of Columbia, including the authority and power to provide for the isolation, quarantine, and restriction of the movements of persons affected by or believed, upon probable cause, to be affected by communicable disease and of persons who are or are believed, upon probable cause, to be carriers of communicable disease."

* * * * * * * *

"Sec. 8. The Health Officer may, without fee or hinderance, enter, examine, and inspect all vessels, premises, grounds, structures, buildings, and every part thereof in the District of Columbia for the purpose of carrying out the provisions of this Act and the regulations issued hereunder. The owner or his agent or representative and the lessee or occupant of any such vessel, premises, grounds, structure, or building, or part thereof, and every person having the care and management thereof shall at all times when required by any such officer or employee give them free access thereto and refusal so to do shall be punishable as a violation of this Act.

"Sec. 9. It shall be unlawful for any person knowingly to obstruct, resist, oppose, or interfere with any person performing any duty or function under the authority of this Act or any regulation promulgated thereunder."

Regulations to Prevent and Control the Spread of Communicable and Preventable Diseases.

"SECTION 1. *Definitions.*—The following definitions shall apply to certain words and terms in these regulations:

(a) *Health Officer.*—The term 'Health Officer' means the Health Officer of the District of Columbia and his duly authorized agents.

(b) *Communicable Disease.* — A communicable disease for the purpose of these regulations means:

Amebiasis (amebic dysentery)
Ancylostomiasis (hookworm)
Anthrax
Botulism
Chancroid
Chickenpox (varicella)
Cholera (Asiatic)
Conjunctivitis (ophthalmia neonatorum)
Conjunctivitis (suppurative, pink eye)
Diarrhea (epidemic of children and adults)
Diarrhea (epidemic of the newborn)
Diphtheria
Diphtheria carrier
Dysentery (amebiasis or amebic)
Dysentery (bacillary)
Encephalitis (infectious)
Erysipelas
Food infection (salmonellosis)
Food poisoning (staphylococcus intoxication)
German measles (rubella or rötheln)
Glanders
Gonorrhea
Granuloma inguinale
Hemorrhagic jaundice (Weil's disease)
Impetigo contagiosa
Influenza
Kerato-conjunctivitis
Leprosy
Lymphocytic choriomeningitis
Lymphogranuloma venereum
Malaria
Measles (rubeola)
Meningitis (meningococcus, meningococcemia)
Mumps (epidemic parotitis)
Paratyphoid fever
Plague (bubonic and pneumonic)

Pneumonia (including virus pneumonia)
Poliomyelitis (infantile paralysis)
Psittacosis (parrot fever)
Rabies in animals
Rabies in man
Rheumatic fever (acute)
Rocky Mountain spotted fever
Scarlet fever (scarlatina)
Smallpox (variola)
Staphylococcal infections
Streptococcal infections (ceptic sore throat, erysipelas and puerperal sepsis)
Syphilis
Tetanus
Trachoma
Trichinosis
Tuberculosis
Tularemia
Typhoid carrier
Typhoid fever
Typhus fever (louse-borne)
Typhus fever (murine)
Undulant fever (Malta fever)
Whooping cough (pertussis)
Yellow fever

(c) *Communicable Disease Carrier.*—A communicable disease carrier means a person who harbors in his body the infectious agent of a communicable disease, but who, at the time, is apparently in good health. For the purpose of these regulations, communicable disease carrier means:
Typhoid carrier
Paratyphoid carrier
Diphtheria carrier
Amebic dysentery carrier
Gonorrhea carrier
Meningococcus carrier
Syphilis carrier

(d) *Infectious Agent.*—Infectious agent means a living micro-organism or virus capable, under

favorable conditions, of causing a communicable disease. Infectious agent also means 'germ,' 'organism,' 'micro-organism,' and 'virus.'

(e) *Contact.*—A contact means a person or animal that has been sufficiently near a person suffering from a communicable disease, a communicable disease carrier, or an animal or object harboring the infectious agent to make possible the direct or indirect transmission of the infectious agent to him.

(f) *Susceptible.*—A susceptible is a person or animal who is not known to have become immune to the particular disease in question by natural or artificial process.

(g) *Restriction of Movement.*—Restriction of movement means the limitation of an individual in his or her association with persons not known to be immune to the communicable disease in question.

(h) *Isolation.*—Isolation means the limitation of freedom to a specified room or rooms of a person who is suffering from, or suspected of suffering from, a communicable disease, or who is a communicable disease carrier, and the exclusion of all persons except attendants from association with such a person.

(i) *Quarantine.*—Quarantine means the limitation of freedom to a specified room, building, or area of any person or animal exposed to a communicable disease for a period of time equal to the longest usual incubation period of the disease to which they have been exposed, or until found free from infection by laboratory methods, and the exclusion of susceptibles from association with such person or animal.

(j) *Placard.*—A placard is an official notice, written or printed, and posted by the Health Officer as a warning of the presence of a communicable disease on the premises.

(k) *Disinfection.*—Disinfection is the process of destroying the vitality of disease-producing organisms or virus by physical or chemical means.

(l) *Renovation.*—By renovation is meant, in addition to cleansing, such repapering, painting,

whitewashing, or other alteration of such part of a human habitation as the Health Officer may deem to be necessary to place the same in a satisfactory and sanitary condition.

(m) *Cleansing.*—Cleansing signifies the removal of infectious material by scrubbing, washing, and exposure to sunlight and air.

(n) *Food Handler.*—The term food handler means any person engaged in the preparation, manufacture, storage, sale, exchange or delivery of food, drink, confectionary or condiment for man, or who comes in contact with any eating, drinking or cooking dishes or utensils employed in the service of such commodities to others."

Joint Resolution of 1892.

Section 2 of the Joint Resolution approved February 26, 1892, 27 Stat. 394, Res. No. 4, D. C. Code, 1940 ed., Sec. 1-226:

"The Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce all such reasonable and usual police regulations in addition to those already made under the act of January twenty-sixth, eighteen hundred and eighty-seven, as they may deem necessary for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia."

Use and Occupancy Regulations.

Commissioners' Regulations Concerning the Use and Occupancy of Buildings and Grounds, promulgated April 22, 1897, amended July 28, 1922:

* * * * * * * * * * *

"2. That it shall be the duty of every person occupying any premises, or any part of any premises, in the District of Columbia, or if such prem-

ises be not occupied, of the owner thereof, to keep such premises or part, * * * clean and wholesome; if upon inspection by the Health Officer * * * it be ascertained that any such premises, or any part thereof, or any building, * * * is not in such condition as herein required, the occupant or occupants of such premises or part, or the owner thereof, * * * shall be notified thereof and required to place the same in a clean and wholesome condition; and in case any person shall fail or neglect to place such premises or part in such condition within the time allowed by said notice he shall be liable to the penalties hereinafter provided.

* * * * * * * * * * *

"10. That the Health Officer shall examine or cause to be examined any building supposed or reported to be in an unsanitary condition * * *.

* * * * * * * * * * *

"12. That any person violating, or aiding or abetting in violating, any of the provisions of these regulations, or interfering with or preventing any inspection authorized thereby, shall be deemed guilty of a misdemeanor, and shall, upon conviction * * * be punished by a fine of not less than $5 nor more than $45."

Garbage.

Act approved January 27, 1905 (33 Stat. pt. 1, 621), entitled "An Act To Authorize the Commissioners of the District of Columbia to enter into contract for the collection and disposal of garbage, ashes, and so forth."

"* * * *Provided further*, That said Commissioners are hereby authorized to make all regulations necessary for the collection and disposal of garbage, miscellaneous refuse, ashes, dead anmials, and night soil, and to annex to such regulations

such penalities as may in the judgment of said Commissioners be necessary to secure the enforcement thereof."

Police Regulations of the District of Columbia, Article XXI,—Garbage, Ashes, and Other Refuse:

"Section 1. The word 'garbage' whenever it occurs in this article shall be held to mean the refuse of any animal and vegetable foodstuffs, except oyster and clam shells; and the words 'dead animals' whenever they occur in this article shall be held to mean any dead animal not killed for food.

"Sec. 2. Occupants of dwelling houses, proprietors of boarding houses, commission warehouses, hotels, restaurants, and other places where garbage is accumulated, and owners, agents, and occupants of apartment or tenement houses shall provide for the use of such premises a sufficient number of receptacles to contain all garbage which may accumulate on said premises during the usual interval between the collections of garbage therefrom and shall keep such receptacles at all times in good repair. Each such receptacle shall be made of metal, watertight, provided with a tight cover with a handle, and shall be so constructed that the contents can be removed therefrom easily and without delay. No person without a permit from the supervisor of city refuse division shall use for the reception of garbage any receptacle having a capacity of less than 3 nor more than 10 gallons nor more than 1 receptacle containing less than 10 gallons. Garbage receptacles of the sunken type shall be located at the point of collection or the interior can must be covered and set out for collection as herein provided.

"Sec. 3. Occupants of any dwelling house, apartment, or tenement house, and each proprietor of any boarding house, commission warehouse, hotel, restaurant, and other place where garbage is accumulated shall cause all garbage from his or her premises to be put in the receptable

provided for the purpose. Each person aforesaid shall cause such receptacle to be kept covered at all times and to be placed and to remain between the hours of 7 a. m. and 6 p. m. of each day on which the collection is made from his or her premises, in such position as to be easily accessible to the garbage collector, or as may be designated by the supervisor of city refuse division. No person shall place or cause to be placed in any garbage receptacle any substance other than garbage, which shall at all times be kept free from dishwater and as dry as practicable."

Nuisances.

Act approved April 14, 1906, 34 Stat. 115 (Secs. 5-313, 315, D. C. Code, 1940) entitled:

"An Act to provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes.

"BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That whenever the owner of any real property in the District of Columbia shall fail or refuse, after the service of reasonable notice in the manner hereinafter provided, to correct any condition which exists on or has arisen from such property in violation of law or of any regulation made by authority of law, with the correction of which condition said owner is by law or by said regulation chargeable, or to show cause, sufficient in the judgment of the Commissioners of said District, why he should not be required to correct such condition, then, and in that instance, the Commissioners of the District of Columbia may, and they are hereby authorized to, cause such condition to be corrected; assess the cost of correcting such condition and all expenses incident

thereto (including the cost of publication, if any, hereinafter provided for) as a tax against the property on which such condition existed or from which such condition arose, as the case may be; and carry such tax on the regular tax rolls of said District, and collect such tax in the same manner as general taxes in said District are collected: PROVIDED, That the correction of any condition aforesaid by said Commissioners under authority of this section shall not relieve the owner of the property on which such condition existed, or from which such condition arose, from criminal prosecution and punishment for having caused or allowed such unlawful condition to arise or for having failed or refused to correct the same.

"Sec. 2. That for the purpose of carrying into effect section one of this Act the Commissioners of the District of Columbia and all other persons, including contractors and employees of contractors acting under their authority or by their direction, be, and they are hereby, authorized to enter upon and into any lands and tenements in said District, during all reasonable hours, to inspect the same and to do whatever may be necessary to correct, in a good and workmanlike manner, any condition that exists on or has arisen from such lands or tenements in violation of law or of any regulation made by authority of law, with the correction of which condition the owner of said lands or tenements is by law or such regulation chargeable. Any person who shall hinder, interfere with, or prevent any inspection or work authorized by this Act shall, upon conviction thereof, be punished by a fine not exceeding one hundred dollars or by imprisonment for a period not exceeding three months, or by both such fine and imprisonment, in the discretion of the court.

"Sec. 3. That for the purposes of this Act any notice required by law or by any regulation aforesaid to be served shall be deemed to have been served (a) if delivered to the person to be notified, or if left at the usual residence or place of

business of the person to be notified, with a person of suitable age and discretion then resident therein; or (b) if no such residence or place of business can be found in said District by reasonable search, if left with any person of suitable age and discretion employed therein at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; or, (c) if no such office can be found in said District by reasonable search, if forwarded by registered mail to the last known address of the person to be notified and not returned by the post-office authorities; or, (d) if no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by the preceding clause of this section be returned by the post-office authorities, if published on three consecutive days in a daily newspaper published in the District of Columbia; or, (e) if by reason of an outstanding, unrecorded transfer of title the name of the owner in fact can not be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore in this section provided. Any notice required by law or by any regulation aforesaid to be served on a corporation shall for the purposes of this Act be deemed to have been served on any such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right; and, if required to be served on any foreign corporation, if served on any agent of such corporation personally, or if left with any person of suitable age and discretion residing at the usual residence or employed at the place of business of such agent in the District of Columbia. Every notice aforesaid shall be in writing or printing, or partly in writing and partly in printing; shall be addressed by name to the person to be notified; shall describe with certainty the character and location of the un-

lawful condition to be corrected, and shall allow a reasonable time to be specified in said notice, within which the person notified may correct such unlawful condition or show cause why he should not be required to do so."

OTHER ACTS OF CONGRESS AND REGULATIONS AFFECTED

Drainage Act

Act of May 19, 1896, 29 Stat. 125, ch. 206, (D. C. Code, 1940 ed., Sec. 6-401):

"That each original lot or subdivisional lot situated on any street in the District of Columbia where there is a public sewer shall be connected with said sewer in such manner that any and all of the drainage of such lot, whether water or liquid refuse of any kind, except human urine and fecal matter, shall flow into said sewer; and if such original lot or subdivisional lot is situated on any street in said District where there is a public sewer and water main, such original lot or subdivisional lot shall be connected with said sewer and also with said water main in such manner that any and all of the drainage of such lot, whether water or liquid refuse of any kind shall flow into said sewer: PROVIDED, That the connections required to be made by this Act shall be made under the following conditions: When there is on any such original lot or subdivisional lot aforesaid any building used or intended to be used as a dwelling, or in which persons are employed or intended to be employed in any manufacture, trade, or business, or any stable, shed, pen, or place where cows, horses, mules, or other animals are kept, then, and in that instance, such original lot or subdivisional lot shall be connected with a public sewer and water main or with a

public sewer, as may be required with this Act; and whenever there is no such building, stable, shed, pen, or place, as aforesaid, on such original lot or subdivisional lot, then such lot shall be required to be connected with a public sewer only when it has been certified by the health officer of said District that such connection is necessary to public health."

Plumbing.

Section 4 of the *Act approved April 23, 1892*, 27 Stat. 21, (D. C. Code, 1940 ed., Sec. 1-727):

"The inspector of plumbing and his assistants shall be under the direction of said Commissioners, and they are hereby empowered accordingly, to inspect or cause to be inspected, all houses when in course of erection in said district, to see that the plumbing, drainage, and ventilation of sewers, and gas-fittings thereof conform to the regulations hereinbefore provided for; and also at any time, during reasonable hours, under like direction, on the application of the owner, or occupant, or the complaint under oath of any reputable citizen to inspect or cause to be inspected any house in said district, to examine the plumbing, drainage, and ventilation of sewers, and gas-fittings thereof, and generally to see that the regulations hereinbefore provided for are duly observed and enforced."

Unsafe Buildings.

Section 1 of the *Act approved March 1, 1899*, 30 Stat 923, as amended, (D. C. Code, 1940 ed., Sec. 5-501):

"If in the District of Columbia any building or part of a building, staging, or other structure, or anything attached to or connected with any building or other structure or excavation, shall, from

any cause, be reported unsafe, the inspector of buildings shall examine such structure or excavation, and if, in his opinion, the same be unsafe, he shall immediately notify the owner, agent, or other persons having an interest in said structure or excavation, to cause the same to be made safe and secure, or that the same be removed, as may be necessary. The person or persons so notified shall be allowed until 12 o'clock noon of the day following the service of such notice in which to commence the securing or removal of the same; and he or they shall employ sufficient labor to remove or secure the said building or excavation as expeditiously as can be done; *Provided, however,* That in a case where the public safety requires immediate action the inspector of buildings may enter upon the premises, with such workmen and assistants as may be necessary, and cause the said unsafe structure or excavation to be shored up, taken down, or otherwise secured without delay, and a proper fence or boarding to be put up for the protection of passersby."

Electrical Inspector.

Section 2 of the *Act approved April 26, 1904,* 33 Stat. 307 (D. C. Code, 1940 ed., Sec. 1-720):

"The electrical engineer who shall be chief inspector of electrical work and his assistants are hereby empowered and required, under the direction of the commissioners, to inspect any building in course of erection and during reasonable hours to enter into and examine any building where electrical current is produced or utilized for lighting, heating, or for power, for the purpose of ascertaining violations of any of the provisions of sections 1-719 to 1-723; and upon finding any devices aforesaid defective or dangerous shall cause to be delivered a written notice of any violation of any

provisions of said sections, or of any regulation of said Commissioners duly adopted, to the constructing contractor, owner, or agent of any building directing him or them to remove or amend the same within a period to be fixed in said notice; and in case of neglect or refusal on the part of the party so notified to remove or amend the same within the time and in the manner prescribed by the chief inspector of electrical work, and approved by the Commissioners of the District of Columbia, the party so offending shall pay a fine of not more than $25 for each and every day's failure or neglect to remove or amend the same after being so notified, and in default of payment of such fine such persons shall be confined in the workhouse of the District of Columbia for a period not exceeding one month; and all prosecutions under sections 1-719 to 1-723 shall be in the police court of said District, in the name of the District of Columbia."

Insanitary Buildings.

Act of May 1, 1906, 34 Stat. 157, ch. 2073, Secs. 1 and 11 (D. C. Code, 1940 ed., Secs. 5-601, 5-611):

"There is hereby created in and for the District of Columbia a board to be known as the Board for the Condemnation of Insanitary Buildings in the District of Columbia, to consist of the assistant to the engineer commissioner in charge of buildings, the health officer, and the inspector of buildings of said District, and to have jurisdiction and authority to examine into the sanitary condition of all buildings in said District, to condemn those buildings which are in such insanitary condition as to endanger the health or lives of the occupants thereof or of persons living in the vicinity, and to cause all buildings to be put into sanitary condition or to be vacated, demolished, and re-

moved, as may be required by the provisions of this chapter. Said board may authorize and direct the performance of any of the ministerial duties of said board by officers, agents, employees, contractors, and employees of contractors duly detailed or employed by the commissioners of said District for that purpose. Said board, the members thereof, and all persons acting under its authority, may, between the hours of 8 o'clock antemeridian and 5 o'clock postmeridian, peaceably enter into and upon any and all lands and buildings in said District for the purpose of inspecting the same. Said board shall report its operations to the commissioners of the District of Columbia from time to time as said commissioners direct. Said commissioners shall furnish said board such assistance as may be required for the proper conduct of its work, by details from various departments and officers of the government of said District.

* * * * * * * * *

"Sec. 11. No person shall interfere with any member of the Board for the Condemnation of Insanitary Buildings or with any person acting under authority and by direction of said board in the discharge of his lawful duties, nor hinder, prevent, or refuse to permit any lawful inspection or the performance of any work authorized by this Act to be done by or by authority and direction of said board."

Boiler Inspector.

Act of June 25, 1936, 49 Stat. 1917, ch. 802, § 10 (D. C. Code, 1940 ed., Sec. 1-711):

"The boiler inspector and his assistants shall have the right to enter, in the performance of his or their duties, at all reasonable hours, all premises on which a steam boiler or unfired pressure

vessel is being installed, operated, or maintained, and it shall be unlawful for any person to deny admittance to any such inspector or assistant or to interfere with him or them in the performance of his or their duties."

Fire Prevention.

Police Regulations of the District of Columbia, Article XI, p. 76, Inflammable Liquids and Combustible Materials:

"Sec. 31. The chief engineer, the fire marshal and his deputies, and the battalion chief engineers of the Fire Department are, and each of them is, authorized and empowered, whenever the public safety requires the same, to enter into and upon all buildings and premises, at all reasonable hours, for the purpose of examination; and whenever any of said officers shall find in any building or upon any premises combustible or inflammable material or other conditions in his or their judgment dangerous to the safety of such building, premises or property adjacent thereto or likely to obstruct or interfere with the members of the Fire Department in the event of a fire therein, he or they shall order the same to be removed or remedied, and such order shall be forthwith complied with by the owner or occupant of said building or premises, or any other person responsible for creating and/or maintaining any such condition: PROVIDED, HOWEVER, That if said owner or occupant of said building or premises, or any other person chargeable hereunder, shall deem himself aggrieved by such order he may, within 24 hours thereafter, appeal from such order to the Commissioners of the District of Columbia, and unless said order is by them revoked it shall remain in force and be forthwith complied with by said owner or occupant, or any other person chargeable hereunder. The

fire marshal shall make an immediate investigation as to the presence of combustible material or the existence of inflammable conditions in any building or upon any premises upon complaint of any person having an interest in said building or premises or property adjacent thereto. Any owner or occupant of any building or premises, or any other person chargeable hereunder, failing to comply with the orders of the fire marshal or his deputies, the chief engineer, or the battalion chief engineer of the fire department, made in compliance with and upon the authority of the provisions of this section, shall, upon conviction thereof, be punished by a fine as provided in these regulations; and any owner or occupant of any building or premises, or any other person chargeable hereunder, who shall willfully obstruct or interfere with any of said last-mentioned officers in the performance of their above-specified duties, shall, upon conviction thereof, be punished by a fine as provided in these regulations."

Rodents.

Police Regulations of the District of Columbia, Article XXXII, p. 153, Rodent Control.

"Section 1. The health officer of the District of Columbia is authorized to make or cause to be made inspections of existing buildings and other structures to determine the prevelance of rats, and if necessary for the protection of the public health, he may order the following things to be done:—first, the vent stoppage of any rat-infested building or other structure or part thereof; second, the removal from the premises of trash or refuse which may provide rat harborages; third, the protection of food and garbage from rats; fourth, the extermination of rats on the premises by baiting or trapping or both. In the event of the proposed demolition, moving or removing, in whole or in part, of

any building or structure, a certificate shall be obtained from the Health Officer stating that proper measures have been taken for the eradication and prevention of spread of rodents from the premises, before the permit to demolish or remove the building, or part, is issued. In the event of the demolition or removal of a building, or part, by order of the Inspector of Buildings, the eradication of rodents will be done by and certified to by the Health Officer, within the time specified in such order.

"Sec. 2. Any person who shall refuse to permit or shall interfere with such inspections, or any owner or occupant of any building or premises who shall fail or neglect to comply with an order issued under the authority of Section 1 within the time allowed by said order, shall be guilty of a violation of these regulations.

"Sec. 3. Any person violating any of the provisions of these regulations shall, on conviction thereof, be punished by a fine of not more than $50.00."

Excerpts from Annual Report of the Commissioners of the District of Columbia.

The Annual Report of the Commissioners of the District of Columbia, required by Sec. 12 of the Organic Act of 1878, enumerates the number of inspections made by the several inspection agencies of the District Government referred to in this brief in the fiscal year ending June 30, 1948 (the fiscal year in which the inspection here involved was attempted), and the result accomplished thereby, as follows:

122 **Building Inspection Division.**

Condemnation proceedings to secure the repair or demolition of approximately 1,750 dangerous and unsafe buildings under the act of March 1, 1899, as amended April 5, 1935, were instituted during the year, resulting in the razing of

16 buildings and repair of approximately 1,200 buildings. This work involved the serving of approximately 3,000 notices to property owners.

At the end of the year there were approximately 185 buildings against which condemnation proceedings had been initiated. The proceedings were in various stages of completions at the close of the fiscal year.

123 **Plumbing Inspection.**

There were 40,784 inspections of plumbing in new buildings, and on extensions, remodeling, and repairs to existing plumbing systems; 5,213 complaints of defective plumbing were investigated and defects ordered corrected; 3,409 inspections were made of restaurants and other establishments where food or beverages were prepared or sold for human consumption; 39 gas cases were investigated, the majority of which were attempted suicide cases, and no serious gas conditions were found; 406 inspections were made by the head of the office and his assistant, principally investigations of illegal plumbing work and cases of appeal or unusual nature; 4,386 inspections were made of rooming, lodging, and apartment houses for licenses.

10,873 plumbing permits were issued, fees amounting $29,903.50.

The refrigeration inspection division made 6,707 inspections of refrigeration and air-conditioning systems. There were 793 permits issued, the fees amounting to $3,790. The approximate cost of refrigeration machinery and air-conditioning equipment was $1,746,329. There were investigations made of 362 refrigeration accidents caused by escaping gas fumes; none were fatal.

125 **Boiler Inspection.**

The Boiler Inspection Act requires the annual inspection of all high-pressure (above 15 pounds pressure) boilers,

low-pressure (below 15 pounds pressure) boilers having an assisted return and unfired pressure vessels operating at pressures above 60 pounds; District of Columbia boiler inspectors made a total of 4,407 calls. These resulted in the inspection of 1,822 boilers and 1,398 pressure vessels or a total of 3,220. This includes 572 District Government boilers and 250 pressure vessels, or a total of 822. It also includes 789 inspections to cover the installation of new boilers and pressure vessels for which permits were issued. Orders were issued to make changes or repairs to 365 boilers and 142 pressure vessels; 7 boilers and 2 vessels were condemned as being unfit for further service. Insurance company reports were received on 1,331 boilers and 691 pressure vessels, or a total of 2,022. The grand total of all boilers and vessels inspected is 5,242.

126 **Electrical Inspection Division.**

The Electrical Inspection Division is charged with the following functions and responsibilities:

1. The inspections and reinspections of electrical installations, fixtures, and appartus for light, heat, and power purposes, to require conformity with minimum standards for safety to life and property, and the enforcements of laws and regulations relating thereto in the District of Columbia.

* * * * * * * * * *

1948

Total number of inspections made	47,734
Total number of permits issued	26,963
Total number of defective wiring notices served	2,533
Total number of complaints received	6,218
Total number of installations approved	28,079

140 **Fire Prevention.**

The department made 132,348 fire prevention inspections during the year. Of these the Fire Prevention Division made 73,730 and the Firefighting Division 58,618. This represents a decrease of 15,671. Notices to abate fire hazards were served in 14,769 cases, an increase of 1,071.

177 **Bureau of Preventable Diseases.**

The activities of the Bureau of Preventable Diseases include the investigation and follow-up of certain reported cases of communicable diseases, immunization service, including protection against smallpox, typhoid fever, diphtheria, and whooping cough, and the diagnostic services in connection with the bacteriological and serological laboratories and research problems. Tuberculosis and venereal-disease-control activities are not administered by the Bureau of Preventable Diseases.

The following table shows to what extent contagious diseases existed in the District of Columbia during the calendar years shown.

Reportable diseases in the District of Columbia, cases and case rates during the calendar years 1943, 1944, 1945, 1946, and 1947

Diseases	Cases 1947
Amoebic dysentery	4
Anterior poliomyelitis	23
Chicken pox	1,337
Diphtheria	8

Diseases	Cases 1947
Ep. cerebro-spinal meningitis	24
Leprosy	0
Measles	576
Pellagra	1
Pneumonia	890
Psittacosis	0
Rocky Mountain spotted fever	0
Scarlet fever	403
Smallpox	0
Tuberculosis communicable	1,860
Tularemia	7
Typhoid fever	6
Typhus fever	1
Undulant fever	0
Venereal disease	17,074
Whooping cough	625
Total	22,839

In general the year 1947 was characterized by a relatively low total incidence of communicable diseases. Except as noted below, there was no unusual incidence of any of the diseases with which the bureau was interested.

TYPHOID FEVER

A total of six cases with no deaths were reported in 1947, which constitutes the lowest incidence on record in the District of Columbia and the first year in which there were no deaths from this disease.

DIARRHEA

In February and March an epidemic of diarrhea or gastroenteritis of unknown etiology occurred especially in the nonwhite population of the city. It appeared on the ob-

stetrical ward and newborn infants were susceptible to the infection. Apparently it was spread by contact, since there was no epidemiological evidence of spread through food or water.

178 **Bureau of Public Health Engineering.**

The responsibility of the Bureau of Public Health Engineering is to promote and protect the public health by supervision, control, and advice on matters relating to environmental sanitation, public health engineering, industrial hygiene, and pest and rodent control. The objectives of the Bureau's activities are preventive rather than curative. Circumstances which would create environmental conditions detrimental to public health should be anticipated and steps taken for prevention before actual occurrence.

Statistical tables of performance and results

Environmental sanitation program:	1947
Field activities	
Original inspections	24,626
Reinspections	34,786
Calls for information and service	18,879
Total	78,291
Original inspections classified:	
Rooming and lodging houses (approvals only)	1,717
Junk shops	52
Child-care facilities	39
Building razing	233
Barber and beauty shops	183
Privies	24
Nuisance complaints	9,121
House-to-house, pick-ups and others	13,257
Total	24,626

Rodent control program:	
Pounds of bait prepared	34,345
Pounds of bait given public & institutions	2,143
Pounds of bait placed	32,202
No. of locations gassed, baited & trapped	7,515
Complaints: Rats and mice	1,355
Orders issued:	
Mice	9
Rats:	
Extermination	2,594
Harborage removal	3,155
Rat-proofing	1,716
Orders abated:	
Mice	12
Rats:	
Extermination	2,653
Harborage removal	3,363
Rat-proofing	1,523

Nuisances Classified

Nuisances involving:	1947		
	Complaints	Ordered corrected	Abated
Animals	274	217	209
Buildings	1,996	1,745	1,345
Heating and cooking facilities	552	630	623
Industrial	95	15	15
Pests and rodents	1,476	7,548	7,626
Plumbing	1,575	1,982	1,916
Rubbish and garbage	1,019	7,423	7,565
Sewerage	1,082	1,131	1,202
Water supply	572	414	418
Miscellaneous	480	896	854
Totals	9,121	22,001	21,773

REPORT OF THE SANITARY COMMISSION OF MASSACHUSETTS, 1850, by Lemuel Shattuck and others; reprinted by Harvard University Press, 1948, with a forword by Charles-Edward Amory Winslow.

[168] "XXIV. We recommend *that the local Boards of Health provide for periodical house-to-house visitations, for the prevention of epidemic diseases, and for other sanitary purposes.*

The approach of many epidemic diseases is often foreshadowed by some derangement in the general health; and, if properly attended to at that time, the fatal effects may be prevented. This is especially proper in regard to cholera and [169] dysentery. The premonitory symptoms of cholera are seldom absent; and if these are seasonably observed and properly treated, the disease is controllable. There are few diseases over which curative measures have less, and few over which preventive measures have greater power. This well-known characteristic of the disease led persons in many places in England, during last year, to organize a system of house-to-house visitation, by which every family, sick or well, in a given district, was visited daily by some authorized person, whether invited or not; and every inmate who had the least symptom of the disease received advice and treatment. * * * We select the following statement of its effects in one district, as an illustration of what occurred in many others:—"* * * [170] * * * During the first week that this system of visitation has been in practice, the visitors discovered 1582 cases of premonitory diarrhoea, and on the second week, 1387; in all, in one fortnight, 2969. Out of this great number, only four deaths have occurred; but in parts of the town not under visitation, among the wealthier classes, attended by their own private medical friends, there have occurred seven deaths. In a rural district connected with Sheffield, —namely, Altercliffe,—not during this period under visita-

tion, with 279 cases of diarrhoea, there were 23 cases of cholera, and 11 deaths. No stronger evidence can well be conceived of the efficiency of that preventive measure which is founded on the fact, which experience has too fully proved, that persons in general laboring under premonitory symptoms are not aware of their danger, and that, if those persons are to be saved, they must be sought out in their dwellings, and placed at once under proper treatment." • • •

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IV. REASONS FOR APPROVING THE PLAN RECOMMENDED

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But the Sanitary Reform we advocate lies chiefly in another field of observation and discovery, which has as yet been very imperfectly explored. This may be called the *Province of Prevention*—prevention of disease—prevention of suffering—prevention of sanitary evils of every kind; and the efforts of those who enter this hopeful province should be directed to the discovery and the means of removal of the *causes of these evils*. Every effect must have a cause—every disease has its cause. And the effort should be to ascertain the exact relation which one bears to the other—what known, exact and positive causes, will produce a known, exact and positive disease, or a sanitary evil of any specific kind, and none other. And is not this as far within the limits of possibility and certainty as is the treatment and eradication of disease? Cannot the exact nature of an atmospheric, local or personal cause of disease, and the exact personal condition with which it most easily assimilates, and which it most easily affects, be

definitely and accurately ascertained? If such a desirable discovery could be made, what manifold blessings on humanity would it confer! We know that a human body, unaltered from its original organization or functions, coming in contact with the virus of small-pox, either inhaled while floating in the atmosphere, or imbibed by outward contact or innoculation, will produce a [276] specific effect, —a specific disease. Here is cause and effect of a known and exact relation to each other. We know, too, that vaccination, properly performed, will alter the original organization or functions, so that the same virus will not in either way take effect. Here is another exact cause and effect whose relations are equally known. This is a discovery which has, within the last fifty years, saved thousands and thousands of lives, and might have saved thousands more, had it been universally applied. Now it is but fulfilling the demands of the age to press inquiries vigorously, and to endeavor to discover the causes of every disease which may attack the human body. If the same exact and definite information could be obtained, as to the causes of cholera, dysentery, scarlatina, typhus, consumption, and the other grave diseases, to which we are subject, and as to the particular condition of the individual which they most easily affect, how much might be done for the avoidance of those diseases by the removal of their causes! How many lives might be saved, how much suffering might be prevented! Does not the spirit of the age then demand the approval of a measure which promises to do this great, —most important work!

VII. *It Should Be Approved Because* IT INVOLVES AN IMPORTANT DUTY

If a measure is practical, useful, economical, philanthropic, moral, and demanded by the spirit of the age, it needs no argument to show that it is our duty to approve it. And if such is our obligation, nothing further need be

said. For, in our judgment, whoever violates a *known duty* is guilty of crime and justly makes himself liable to its penalties. If an individual swallows poison, and death immediately follows; or if, by improper eating, drinking, or course of life, he gradually debilitates his constitution, and death is the ultimate consequence, he violates a known law, neglects his duty, and justly suffers [277] the physical penalties of his guilt. If we, as social beings, make no effort to elevate the sanitary condition of those around us by removing the causes of disease, we violate a known duty, and make ourselves justly guilty and liable to punishment; and we shall inevitably be punished, either by suffering sickness, or by death, or in some other way. If a municipal or state authority neglects to make and execute those sanitary laws and regulations on which the health and life of the people depend, they violate a known duty, and are justly chargeable with guilt and its consequences; and they will certainly be punished, either by means of less capacity for labor, of increased expenditures, of diminished wealth, of more abject poverty and atrocious crime, or of more extended sickness and a greater number of deaths; or in some other form. These are the physical and social consequences of a neglect of sanitary duty. But there are others; and we would mention them with all that regard which is their due.

It has already been said that the first sanitary laws were the direct revelation of the Divine Lawgiver; and that they have been further developed in the successive ages of the world. These laws are now, to some extent, well understood. And may we not conclude that we shall be brought to an account for the manner in which we have observed and obeyed them? May we not reasonably believe that we shall hereafter see the wisdom of that providence which produces the earlier and later deaths, the physical sufferings, and the innumerable sanitary evils which surround and afflict us in this world,—that they were the just and

inevitable result of violations of those sanitary laws which were given us for our guidance and happiness,—and that these evils might have been avoided if these laws had been understood and obeyed? May it not then appear that many a law-maker, many a public administrator, and many a private individual, has been guilty of robbing others, and of robbing himself, of health and of life,—all that is dear on earth;—guilty of murders and of suicides;—and none the less fearfully real and punishable because they were unintended? The possibility of such a result may well arrest universal attention. 'In regard to the whole range of the laws of health [278] and life, Providence seems to treat mere ignorance as an offence, and to punish it accordingly.' There is a great social and personal responsibility resting upon every one in this matter; and it is well that it should be felt in all its force and importance, and that all the duties which it requires should at all times, and in all places, be wisely discharged. * * *

[304] 8. It appeals to the *State*. Under our constitution and laws 'each individual in society has a right to be protected in the enjoyment of his life.' This may be considered in a sanitary as well as a murderous sense. And it is the duty of the State to extend over the people its guardian care, that those who cannot or will not protect themselves, may nevertheless be protected; and that those who can and desire to do it, may have the means of doing it more easily. This right and authority should be exercised by wise laws, wisely administered; and when this is neglected the State should be held answerable for the consequences of this neglect. If legislators and public officers knew the number of lives unnecessarily destroyed, and the suffering unnecessarily occasioned by a wrong movement, or by no movement at all, this great matter would be more carefully studied, and errors would not be so frequently committed. * * * "

Hearings Before Subcommittee of the Committee on Banking and Currency, United States Senate, 81st Congress, 1st Session, on General Housing Legislation, Feb. 3-21, 1949.

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February 11, 1949.

433 **"Statement of Leonard A. Scheele, Surgeon General of the United States Public Health Service.**

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441 Senator DOUGLAS. I am much impressed with the statement. I wonder if Dr. Scheele would submit a memorandum, which he hinted on page 6 that he would be willing to submit, an abstract of the studies which have been made of the coincidence of bad housing and disease, and so forth?

Dr. SCHEELE. Yes, sir; we will be happy to submit an abstract of some of those studies.

Senator DOUGLAS. Thank you.

(The following was later submitted for the record:)

SUPPLEMENTAL DATA CONCERNING RELATIONSHIP OF HOUSING TO HEALTH

The following statements and data are taken from published reports of studies by representatives of the Public Health Service and by others. They represent neither an exhaustive summary of the literature nor a comprehensive analysis of all pertinent data. Rather, they have been selected as illustrative of several points raised in the formal statement, and as a result of questions by members of the subcommittee.

Enteric diseases.—There have been numerous studies of the relationship between housing quality and the attack rates for enteric diseases. The National Health Survey,

conducted by the Public Health Service during 1935 and 1936, revealed an excessive incidence of typhoid and paratyphoid fever, and of diarrhea, enteritis, and colitis among persons living in houses lacking private inside flush toilets as compared with families having such facilities (1). The frequency (per 1,000 persons) of cases of typhoid and paratyphoid disabling for 7 days or longer during 1 year for all income groups was more than twice as high for persons living in houses without private inside flush toilets—0.29, as compared with 0.13 for persons living in houses with private inside flush toilets. Correspondingly, rates for diarrhea, enteritis, and colitis, using the same bases for analysis, were 1.3 and 1.

Graves and Fletcher studied the incidence of typhoid fever and of infant mortality in Memphis (2). For colored families, they report: 'In a group of wards in which the percentage of families without private toilets was 80 or above, the typhoid-fever case rate was 64.2 (per 100,000 population per year); * * * where the percentage of families without private toilets was 60-79, the case rate was 43.1; and for a group of wards where the percentage of families without private toilets was below 60, the rate was 29.1.' They concluded that typhoid-fever case rates and infant mortality for both the white and the colored races varied directly with their slum index—i.e., the more serious the slum conditions, the higher the rates.

McConigle has noted a significant decrease in the infant mortality rate—from 172.6 to 117.8 infant deaths per 1,000 live births per year—for babies born into families who have been moved from slums to satisfactory housing (3).

* * * * * * * * * *

443

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DWELLING INSPECTION BY FIRE DEPARTMENTS

By M. S. Blake, Field Engineer, N.F.P.A.

(Pamphlet reprinted from the *Quarterly* for April, 1936, revised 1940; published by National Fire Protection Association, 60 Batterymarch Street, Boston, Mass.)

"The increasing attention to the elimination of home fire hazards in cities is one of the most gratifying developments in the field of fire waste reduction. Recognition of the importance of special effort to prevent fires in dwellings follows a general increase in the number of dwelling fires in the United States during the past ten years. The majority of all fire fatalities now occur in residences.

For some years past fire departments in most cities have been fire prevention agencies as well as fire extinguishing organizations. They have sent their uniformed forces into buildings armed with special authority to inspect for hazards, but until recent years this work has been largely confined to public and business properties. Several apparent difficulties have been responsible for not including the private residence in the inspection program, though fires in this occupancy in practically all cities regularly outnumber the fires in other buildings. Chief among these is the common idea that 'a man's house is his castle' and laws limiting the legal power of fire departments to enter dwellings except in special cases. Some undermanned departments also regarded fire prevention visits to a large number of dwellings as too great an undertaking to be made a part of their routine inspection program. These difficulties, however, have finally been overcome by progressive

fire chiefs determined to stem the rising tide of home fires in their communities, and an increasing number of cities are now extending their fire department inspection service to homes.

It has been clearly established that a well-publicized dwelling inspection campaign carried out by uniformed firemen may be successfully introduced in any city without necessity for invoking the law. Experience has shown that it is the exceptional householder who will not welcome helpful advice to prevent loss of lives and property in his home by fire, and refusals of admittance to firemen making a proper approach have been rare. Although conducted wholly on a basis of courtesy rather than law, the service soon becomes an accepted one in the community and its continuation in subsequent years ceases to require the explanatory publicity usually necessary when the inspection is first started. Moreover, lack of a large fire department personnel need not be a serious hindrance to comprehensive inspection of dwellings. In a number of cities, large and small, faced with this problem the firemen have been convinced of the public good will and prestige which accrue to the benefit of their department and themselves from this service to the greater body of citizens and have willingly volunteered some off-day time for it.

Some of the cities in which the fire department has carried out an organized fire prevention inspection of dwellings are:

Arlington, Mass.
Baton Rouge, La.
Berkeley, Calif.
Boston, Mass.
Brockton, Mass.
Cambridge, Mass.
Chelsea, Mass.
Cincinnati, Ohio
Cleveland Heights, Ohio
Dallas, Texas
El Dorado, Ark.
Erie, Pa.
Everett, Mass.
Fitchburg, Mass.
Fort Collins, Col.
Fort Wayne, Ind.
Fort Worth, Texas
Grand Rapids, Mich.
Hartford, Conn.
Helena, Ark.
Indianapolis, Ind.
Irvington, N. J.
Jonesboro, Ark.
Little Rock, Ark.
Lynchburg, Va.
Lynn, Mass.
Malden, Mass.
Memphis, Tenn.
Meriden, Conn.
Middletown, Conn.
Middletown, Ohio
Newport News, Va.
Oklahoma City, Okla.
Omaha, Neb.
Parkersburg, W. Va.
Peabody, Mass.
Pine Bluff, Ark.
Providence, R. I.
Portsmouth, Ohio
Salem, Mass.
St. Paul, Minn.
Schenectady, N. Y.
Springfield, Mass.
Taunton, Mass.
Worcester, Mass.

In most of these cities the inspection of homes is made regularly each year or oftener, and in some it has now become a continuous routine.

(Graph has been omitted.)

As to results, Cincinnati is an excellent example of what has been done. For many years the fire department included in its regular fire hazard inspection program a small proportion of the city's residential occupancies. An excessive number of fires and loss in dwellings up to then brought about, in 1934, a change in the work to provide continuous inspection of all residence properties throughout the city by members of fire department companies in their own districts. The following table shows the relation between annual number of inspections and number of fires in dwellings in Cincinnati.

Year	Dwellings Inspected	Dwelling Fires
1928	8,150	951
1929	8,619	992
1930	9,613	1,113
1931	7,292	916
1932	9,717	984
1933	10,697	1,013
Six-year average	9,015	995
1934	81,052	522
1935	78,288	488
1936	74,493	595
1937	68,501	524
1938	78,348	404
1939	61,756	465
Six-year average	73,740	500

The usual procedure followed in making an organized fire hazard inspection of dwellings by firemen varies somewhat in different cities, but its essential features are much the same. The highly successful methods employed in Providence, R. I., a city of 250,000 population, are typical. The initial campaign was inaugurated there by Fire Chief Frank Charlesworth in 1930 and may well serve as a helpful illustration for other cities of any size. Convinced of its feasibility, the Chief sought and received the enthusiastic cooperation of the fire prevention committee of the Providence Chamber of Commerce and a series of meetings was held to work out the details of the program. An attractive illustrated leaflet explaining common fire hazards of the home and a small window card with the inscription 'We Are Working with the Providence Fire Department to Fight for Fewer Fires' were designed and printed. It was decided to confine the inspection to basements. The campaign was opened in late September, just prior to Fire Prevention Week and for the first week stories were carried by the newspapers with local dwelling fire statistics, showing the need of the plan and explaining it with special emphasis on its purely educational purpose for public benefit free from any compulsion or threat to property owners.

Firemen were asked to volunteer off-day time and responded to a man to the appeal. All were carefully instructed as to how to proceed with their task. The men were assigned to work in pairs and 150 a day were available for inspection throughout the campaign, which required six weeks to visit all of the 77,000 homes in the city.

In making their rounds two firemen called at the back door of the house and asked permission of the housewife to make a fire inspection of the basement. She was asked to accompany them if her time would permit. Only the usual simple hazards found in basements were investigated. Hazards noted were pointed out at the time of inspection

and corrections suggested. The literature on home fire hazards was then distributed.

From the start of the campaign it was evident that the idea had the full support of the general public. Firemen were refused admittance to only 228 homes, a fraction of one per cent of the total number. Many home owners, unwilling that the firemen should find a dirty or hazardous condition, had anticipated their visit by cleaning up the basement before they arrived.

With public support for this service thus firmly established, its repetition presented no difficulty and the original campaign has now become a regular annual feature of fire prevention work in that city. The following dwelling fire record of Providence speaks for its benefits more eloquently than words.

Number of Dwelling Fires, Providence, R. I.

Before Start of Inspections

1926	610
1927	478
1928	477
1929	544
1930	549

Since Start of Inspections

1931	413
1932	374
1933	296
1934	292
1935	287
1936	293
1937	275
1938	301
1939	228

There are many other examples of diminishing dwelling fire records among the cities which have also executed similar plans for attacking this problem.

St. Paul has a very creditable record to show.

St. Paul—Dwelling Fire Record.

Before Dwelling Inspections

Year	No. of Dwelling Fires
1930	912
1931	858
1932	979
1933	1080
1934	1003

Since Dwelling Inspections

1935	956
1936	981
1937	841
1938	672
1939	658

Dwelling losses are not kept year by year, but figures were specially compiled for the N.F.P.A. by the St. Paul Fire Department. In 1934, the year before dwelling inspections were begun, dwelling fire losses were $279,970.54 (44 per cent of the total fire loss for that year), while the 1939 dwelling fire loss was $176,920 (or 31.1 per cent of the total year's fire loss). This is a sizable decrease.

Berkeley, California, with a program whereby the fire department regularly inspects dwellings has steadily reduced the number of dwelling fires in spite of increasing population.

Year	Population	Number of Dwelling Fires
1928	81,000	402
1929	85,000	367
1930	82,000	359
1931	83,000	298
1932	86,000	345
1933	89,000	308
1934	92,000	272
1935	93,000	295
1936	96,000	265
1937	97,000	251
1938	99,000	221
1939	102,000	231

Organized fire hazard inspection of dwellings in addition to other buildings is a logical part of a fire department's service to its community for fire prevention and fills a widespread need which has long existed. It has a particular advantage of being an inexpensive measure for any city to adopt. In every instance this practice has added practically nothing to the fire department budget. Proof of its value in dollars and cents return to a community at large is shown by the illustrations in this article of the resulting decline of fires with their damage to the homes. The rapid acceptance of the practice in a short time by cities in all regions of the United States is in itself evidence of its practicability and its value, both economically and for preservation of lives."

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 302.

DISTRICT OF COLUMBIA, *Petitioner*,

v.

GERALDINE LITTLE, alias MILDRED PARKER, *Respondent*.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

BRIEF FOR GERALDINE LITTLE, ALIAS MILDRED PARKER.

JEFF BUSBY, and
JEFF BUSBY, JR.,
Attorneys for Respondent,
706 Washington Loan &
Trust Building,
900 F Street, N.W.,
Washington 4, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

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PRELIMINARY STATEMENT.

The Court will note that the brief for petitioner on this appeal is not responsive to the questions presented on the appeal. The brief sets out the charge (P. 2) on which respondent was convicted, that "on premises 1315 10th Street, northwest, did therein hinder, obstruct, and interfere with an inspector of the Health Department in the performance

of his duty," and then by implication directs attention away from the residence of respondent as if the charge had been placed on what happened at a place removed from the residence. Petitioner's brief states (P. 4) "The evidence adduced by the prosecution was wholly of a testimonial character and related exclusively to events occurring beyond the confines of respondent's dwelling."

Petitioner sought to take this course in the Municipal Court of Appeals (R. 11-12) to which that court replied, "The Government insists that the case may be resolved without reference to the Constitutional propriety of the attempted entry. It is said that the appellant's (respondent's) arrest was predicated upon her actions on a public street in interfering with the arrest of Allen. However, the information upon which appellant (respondent) was convicted charged her with interfering with a public health officer, not a police officer. Making arrest is not a part of the duties of a health officer. Furthermore, the case was not tried upon this theory. The trial judge's memorandum opinion deals only with the constitutional issue, and we believe that our decision also must turn upon it."

This same approach was indulged in in the argument and brief of the petitioner on the hearing in the Circuit Court of Appeals (R. 19). The court said: "As a separate consideration, the District (petitioner) also presents an argument based upon some conflict in the testimony as to whether appellee (respondent) was arrested for hindering the health officer by refusing to unlock the door on the premises or was arrested for interfering with a police officer in the arrest of another person at a police call box some distance down the street. That argument has no bearing upon this case, because the information upon which appellee (respondent) was convicted charged her with interfering with a health inspector, not the policeman, upon the premises, not upon the street, and with hindering the performance of duty by the health inspector, not with interfering with a police officer in the performance of an arrest.

We must limit the question before us. Many of the problems discussed in the District's (petitioner's) brief are not in the case."

Likewise, it is appropriate to call the attention of the Court to the fact that in petitioner's brief "many of the problems discussed in the petitioner's brief are not in the case" on the appeal to this Court. Much space is devoted in petitioner's brief to a general discussion of garbage and court decisions relating generally to that subject, to communicable disease, to nuisances, to drainage, plumbing, electrical inspectors, boiler inspectors, fire inspectors, rodents, in fact to almost all the subjects in which a municipality may engage. The brief of respondent could not appropriately follow the petitioner into its rambling discussion of generalities in these various subjects which are unrelated to the issues before the Court on this appeal. No such task will be undertaken by respondent.

COUNTER STATEMENT OF CASE.

Respondent cannot fully agree with the factual statement of the case as set out in petitioner's brief. Respondent was charged and convicted in the Municipal Court as follows:

> That she "on premises 1315 10th Street, northwest, did therein hinder, obstruct, and interfere with an inspector of the Health Department in the performance of his duty in carrying out the provisions of an act of Congress, The Health Regulations, contrary to and in violation of an Ordinance Regulation in such cases made and provided, and constituting a law in the District of Columbia."

The simple facts were, which are disclosed by the record certified by the trial Justice and the testimony he heard on the trial, that late in the afternoon of September 9th, 1947, one C. Abney, an inspector of the Health Department of the District of Columbia, appeared, accompanied by M. A. Dixon, a Metropolitan police, in front of the prem-

ises 1315 10th Street, northwest, which premises was the private residence of respondent. A young man by the name of Allen who was a visitor in said home approached the house. The health inspector demanded of Allen that he unlock the door and permit the inspector to enter the house. Allen's reply was that he did not live there and that he could not comply with the request. About that time respondent approached her home from across the street and called out to Allen not to unlock the door. When she had reached the place where Allen, the inspector and the policeman were it was made known to the inspector that the house was respondent's private residence. The inspector then demanded of her that she unlock the door and permit him to enter. This she refused to do. She explained to him that the house was her private residence; that she had some Constitutional rights that protected her in her private home and in her privacy of it.

Neither the inspector nor the policeman had a warrant, writ or other process of any kind from any court entitling them or either of them to enter the house. The respondent had been given no notice of their coming. After considerable discussion and argument about the right of the inspector to enter the private dwelling of respondent, and after she had explained to him what she believed to be her Constitutional rights about their entry under the circumstances, respondent and Allen were summarily arrested on the spot by the policeman on the oral command of the inspector. They were then carried under arrest to a call box from which a police van was summoned. The respondent and Allen were detained under arrest until the patrol van came, then they were loaded into it and carried to a police precinct. They were held there until about nine o'clock that night when respondent was located by her husband who came and put up a deposit of $25.00 for her release.

The next day, September 10, 1947, the said C. Abney, health inspector, filed the foregoing charge against respondent on which she was tried and convicted.

On the trial no testimony was offered by petitioner to show that there was garbage or any other condition in the home of respondent which would indicate that anything therein was out of order. Although Cobb, the person who was alleged to have made the "complaint" to the Health Department was in court at the trial he was not introduced by petitioner as a witness. The only excuse given by the health inspector for his conduct in trying to enter the private residence of respondent was that it had been "reported" to the Health Department that uncovered garbage was in the house, and that proper use of the toilet facilities was not being availed of. There was no verification that an "occupant" in the house made any such complaint and the record certified by the trial Justice does not support the statement.

The arbitrary and high-handed procedure of this inspector of the Health Department is disclosed by the evidence in this case. He went to the private residence of respondent. He would brook no opposition, although he had no warrant or other authority to enter this home over the objection of the owner. He armed himself with a Metropolitan police. Should respondent object to his entry of her home, as she did, he would have her summarily arrested by the policeman and haul her away to prison. No warrant he contends was necessary. His command on the spot became the law which the policeman obeyed, in total disregard of respondent's constitutional rights.

QUESTION PRESENTED.

The questions presented in this case are considerably broader than is set out in petitioner's brief (p. 6). When the case came on for trial after the close of the testimony and oral argument the trial justice invited counsel to submit written briefs. This was done. The respondent cited all the acts of Congress under which the District of Columbia was empowered to enact the Ordinance under which respondent was being prosecuted. She contended there was

authority granted by Congress to the District of Columa under which Ordinance could be enacted to authorize e action being exercised by the health inspector. Respont specifically stated in writing the following propositons to the trial court:

"1. The proof shows that the place the Health Officer was seeking to enter and inspect was a private dwelling house; there was no proof that there was an infectious or other disease therein; that there was no condition therein which could in any way effect the public health.

"2. That an invasion and entry of said private dwelling house by the Health Inspector, over the objection of the defendant (respondent), the occupant, was an illegal act and an invasion of defendant's (respondent's) Constitutional rights.

"3. That the entry of said Health Officer, over the objection of defendant (respondent) would have been an unlawful act and an invasion of her rights of privacy.

"4. That any Ordinance of the District of Columbia which sought to give the Health Inspector a right to enter the private dwelling house of defendant (respondent) without a warrant, writ or other legal authority, and without notice to her, was beyond the authority of the Commissioners of the District of Columbia to enact, and beyond the power granted the District by Congress.

"5. That any attempt by Congress to give the District of Columbia power to enact an Ordinance to give the health inspector authority to enter the private dwelling of defendant (respondent) over her objection and without a warrant was beyond the power of Congress to enact, was un-Constitutional, and was an invasion of defendant's (respondent's) Constitutional rights." (R. 7)

All of the above objections were earnestly renewed and ressed in the Municipal Court of Appeals, and in the Cirit Court of Appeals, and are now insisted on as being ell taken on the appeal in this Court.

ARGUMENT.

The United States Court of Appeals for the District of Columbia reduced the question for consideration by it, as follows: "The simple question is: Can a health officer of the District of Columbia inspect a private home without a warrant if the owner or occupant objects?" It then states: "The Fourth Amendment to the Constitution applies," and cites the following authorities, *Neild* v. *District of Columbia*, 71 App. D. C. 306, 110 F. 2d 246 (1940); *National Mutual Ins. Co. of D. C.* v. *Tidewater Transfer Co., Inc.*, 17 U. S. L. Week 4536 (U. S. June 20, 1949).

The mission of C. Abney to the home of respondent was not one to make an "inspection" as the term is usually applied, as when a piece of machinery, a piece of work, a building job, etc. is inspected. He came in the name of the Health Department, accompanied by a uniformed Metropolitan police officer to make a "search" not an "inspection" for incriminating evidence in the home of respondent. Otherwise why should he have been accompanied by a policeman from the criminal enforcement division of the District of Columbia? Why should the health inspector have been provided by the police department on this occasion, with a policeman unless it was to have him testify against respondent in the event incriminating evidence should be found on a search of her home by the health inspector and the policeman or unless it was for the purpose of making an arrest at the command of the health inspector? This police officer was on duty; he was in uniform; the search of respondent's home had been planned to look for incriminating evidence with which to prosecute respondent under the Ordinance.

This was in no sense a civil action. The Ordinance under which the health inspector proceeded provided criminal penalties as, the action taken illustrates; it provided for a fine and imprisonment of respondent.

The only "interference" the petitioner sought to prove against respondent was that she refused to become his un-

willing agent, while on the outside of her home, and unlock the door of her home, and permit him and the policeman to enter and make a search for incriminating evidence against her. Had she been on the inside of her home and refused to obey the command of the health inspector to unlock the door to her home and permit him and the police officer to enter and make the search the factual situation would have been no different. She was within her legal rights in refusing to permit the entry and in taking the course she did. Her arrest and conviction on the charge stated was unlawful.

Police Powers of the District of Columbia. The Commissioners of the District of Columbia can exercise only such powers as are granted to it by Congress within Constitutional Limits. The District of Columbia possesses no inherent Police Power such as do the States.

Taylor v. *District of Columbia*, 24 App. D. C. 392, is the only case that has construed the Ordinance under which respondent was prosecuted. The court in that case in discussing the powers of the Commissioners of the District of Columbia to enact ordinances, by reason of powers granted it by Congress, held:

> (Syllabus) A. "When any part of the police power, which resides primarily in the State, is conferred upon a municipality, no more power is presumed to have been granted than is expressly stated in the words of the grant."
>
> (Syllabus) B. "When the municipal authorities have no power to make a municipal regulation it is void, although it is reasonable, just, and proper in itself, even if necessary for the preservation of peace and good."

Congressional Acts under which Ordinance in Question Could have been Enacted. I have made a thorough search for all Acts of Congress under which the Ordinance relied on by petitioner could have been enacted. They are as follows:

February 26th, 1892—52 Cong., Sec. 1, Res. 4-7, 1892.

"(4). Joint Resolution to regulate the licenses to proprietors of theaters in the City of Washington, District of Columbia, and for other purposes.

"That all licenses issued by the District of Columbia to proprietors of theaters or other public places of amusement in the City of Washington, District of Columbia, and now in force, be and the same are hereby terminated, unless the person holding such license shall within ten days after due notice to comply with such regulations as may be prescribed for public safety by the Commissioners of the District of Columbia.

"2. That the Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce all such reasonable and usual police regulations in addition to those already made under the Act of January 26, 1887, as they may deem necessary for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia.

Approved February 26, 1892."

The Act of Congress of January 26, 1887 (Chapter 45, Statutes of the U. S. at Large, Vol. 24, page 365) referred to in the above Act of February 26, 1892, provides:

"Ch. 45. An act for the further protection of property from fire, and safety of lives, in the District of Columbia.

"That it shall be the duty of the owner in fee or for life of every building constructed and used or intended to be used, as a hotel, factory, manufactury, theater, tenant-house, seminary, college, academy, hospital, asylum, hall, or place of amusement * * * or using any building 50 feet high to erect fire escapes."

No other purpose or purposes are covered by the above quoted Act of Congress than that of providing protection from fire in buildings used by the public or buildings of a public nature.

Based on the above Congressional Authority to enact "all such reasonable and usual police regulations" the Commissioners for the District of Columbia enacted the following Ordinance:

"Office of the Commissioners of the District of Columbia.

Washington, April 22d, 1897.

"Ordered: That pursuant to the 'Joint Resolution to regulate licenses to proprietors of theaters in the City of Washington, District of Columbia, and other purposes' the following regulations concerning the use and occupancy of buildings in the District of Columbia are hereby made.

"1. That it shall be and is hereby, made the duty of any owner of any premises or building situated in the District of Columbia to provide and furnish such building and premises, etc. * * *

"2. That it shall be the duty of every person occupying any premises, or any part of any premises in the District of Columbia, or, if such premises be not occupied, of the owner thereof, to keep such premises or part, etc. * * * clean and wholesome. If upon inspection by the Health Department, it be determined that any such part, or any building, yard, etc. * * * is not in such condition as herein required, the occupant or occupants of such premises or part, or the owner thereof, shall be notified and required to place same in a clean and wholesome condition; and in case any person shall fail or neglect to place said premises or part in such condition within the time allowed by said notice, he shall be liable to the penalties hereinafter provided.

"10. The Health Office shall examine or cause to be examined any building supposed or reported to be in an unsanitary condition, and make a record of such examination; of the location of the building; the purpose for which it is used, and the name of the owner and lessee and occupant. If after such examination he shall deem any structure or building, or any part thereof or appurtenances thereto in such condition as

to endanger the health of the inmates thereof, or of those living in the vicinity, he shall serve upon the occupants or cause to be served a notice in writing upon the owner, agent, or other party having interest in said structure, requiring same to be put in proper condition within the time as he may direct; and it shall thereupon be the duty of such interested party or parties to comply with and execute the order of the Health Officer under the penalties as provided in Section 12 of this regulation, unless an appeal is taken as hereinafter provided, * * *

"12. That any person violating or aiding or abetting in violating, any of the provisions of these regulations, or interfering with or preventing any inspection authorized thereby, shall be deemed guilty of a misdemeanor, and shall, upon conviction in the Police Court, be punished by a fine of not less than $5.00 nor more than $45.00.

"Amendment of July 28, 1922."

When respondent came on for trial on a criminal charge of violating the above Ordinance, that she interfered with a health inspector by refusing to unlock her private dwelling and permit him on his demand, to enter her home, without a warrant or other authority except his oral command, and after the testimony was closed she filed in writing (R. 7) the five reasons herein above set forth raising her constitutional objections to the proceeding. For those reasons demanded that she be found not guilty by the trial court.

Notwithstanding the foregoing challenges to the application of the Ordinance to respondent's private dwelling house (there is no contention that this ordinance is not good when applied in the way Congress intended, that is to public places, places under the supervision of the District of Columbia, licensed boarding houses, hotels, and places with which such ordinances usually and customarily deal, within the power granted by Congress to the District to supervise in the public interest) the trial Justice

convicted respondent on the charge of interfering with a health officer in the performance of his duty, when the only pertinent proof against her was that she refused to unlock the door to her home, a private residence, and permit the health inspector and the police officer to enter to make a search for evidence with which she could be incriminated should she be charged as a result of the search.

Unconstitutional Ordinances. An ordinance enacted by a city must not only be within the power granted by the State or Congress to enact the ordinance but it must not infringe on the Constitutional rights of individuals. In *Buchanan* v. *Warley,* 245 U. S. 60, the Court said:

> "It is equally established that the Police power, broad as it is, cannot justify the passage of a law which runs counter to the limitations of the federal Constitution; that principle has been so frequently affirmed in this Court that we need not stop to cite cases."

Application of the Fourth Amendment. In this case, *District of Columbia* v. *Little* (decided August 1, 1949) in the opinion written by Justice Prettyman in the United States Court of Appeals for the District of Columbia, the Court said (R. 21):

> "The Fourth Amendment did not confer a right upon the people. It was a precautionary statement of a lack of federal governmental power, coupled with a rigidly restricted permission to invade the existing right. The right guaranteed was a right already belonging to the people. The reason for the search warrant clause was that public interest required that personal privacy be invaded for the detection of crime, and the Amendment provided the sole and only permissible process by which the right of privacy could be invaded. To view the Amendment as a limitation upon an otherwise unlimited right of search is to invert completely the true posture of rights and the limitations thereon.

"Much of the argument of the District is devoted to establishing the public importance of the health laws. Assertions are also made of the beneficence and forbearance of health officers. But the constitutional guarantee is not restricted to unimportant statutes and regulations or to malevolent and arrogant agents. Even for the most important laws and even for the wisest and most benign officials, a search warrant must be had.

"We emphasize that no matter who the officer is or what his mission, a government official cannot invade a private home, unless (1) a magistrate has authorized him to do so or (2) an immediate major crisis in the performance of duty affords neither time nor opportunity to apply to a magistrate. This right of privacy is not conditioned upon the objective, the prerogative or the stature of the intruding officer. His uniform, badge, rank, and the bureau from which he operates are immaterial. It is immaterial whether he is motivated by the highest public purpose or by the lowest personal spite.

"To be certain that we have stated the rule no broader than existing law, one has only to read the cases cited, supra in footnote 5; (Agnello v. United States, 269 U. S. 20, 70 L. Ed. 145, 46 S. Ct. 4 (1925); Harris v. United States, 331 U. S. 145, 91 L. Ed. 1399, 67 S. Ct. 1098 (1947); Davis v. United States, 328 U. S. 582, 90 L. Ed. 1453, 66 S. Ct. 1256 (1946); Johnson v. United States, 333 U. S. 10, 92 L. Ed. ...., 68 S. Ct. 267 (1949); McDonald v. United States, 335 U. S. 451, 93 L. Ed. ...., 69 S. Ct. 191 (1949); Wolf v. Colorado, 17 U. S. L. Week 4639 (June 27, 1949)). Indeed the opinions in McDonald v. United States alone are sufficient."

Search Warrant Required. The Supreme Court in *McDonald v. United States, supra* (December 13, 1948) through Mr. Justice Douglas, the Court said:

"We are not dealing with formalities. The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor

to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade the privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals. Power is a heady thing; and history shows that police acting on their own cannot be trusted. And so the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of a home. We cannot be true to that constitutional requirement and excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made the course imperative."

In *Agnello* v. *United States*, 269 U. S. 20, 46 S. Ct. 4 (1925), the Court said:

"While the question has never been directly decided by this Court, it has always been assumed that one's house cannot be lawfully searched without a warrant, except as an incident to a lawful arrest therein. Boyd v. United States, 116 U. S. 616, 624, et seq., 630, 6 S. Ct. 524, 29 L. Ed. 746; Weeks v. United States, supra, 393; Silverthorne Lumber Co. v. United States, supra, 391; Gouled v. United States, 255 U. S. 298, 308, 41 S. Ct. 261, 65 L. Ed. 647. The protection of the Fourth Amendment extends to all equally—to those justly suspected or accused, as well as to the innocent. Search of a private dwelling without a warrant is in itself unreasonable and abhorrent to our laws. Congress has never passed an act purporting to authorize the search of a house without a warrant. • • • Save in certain cases as incident to arrest, there is no sanction in the decisions of the court, federal or state, for search of a private dwelling house without a warrant. Belief, however well founded, that an article sought is concealed in a dwelling house, furnishes no justification for a search of that place without a warrant. And such searches are held unlawful notwithstanding facts unquestionably showing probable cause" (citing many authorities).

In an examination of the numerous cases from all the courts applying the Fourth Amendment to the protection of the security of the home I have failed to find any authority holding that a private home may be subjected to a search warrant except to enforce the law against crime. The only condition on which a search warrant may be obtained is set forth in the Fourth Amendment. I have failed to find a holding by any court that a private home may lawfully be invaded by an officer unless his business was to carry out the provisions of a search warrant, or unless he was engaged in making an arrest when faced with "some grave emergency" that would not permit delay in securing a search warrant. Because of the inherent rights of the people to privacy in their homes I do not believe there is any power under our system of government or any provision in the Fourth Amendment to the Constitution to authorize the issuance of a search warrant to make a search of a private home where the enforcement of the criminal law is not the objective. There is no such thing recognized by the law as a peaceful forced "inspection," by an officer, of a private home over the objection of its owner where a refusal of permission of such "inspection" would subject the owner of the home to a criminal prosecution, such as is the case against respondent.

The Right to be Let Alone in the Home. Mr. Justice Brandies stated the philosophy back of the adoption of the Fourth Amendment to the Constitution in his dissenting opinion in *Olmstead* v. *United States,* 227 U. S. 438, 478, 48 S. Ct. 564, 572, as follows:

> "The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's natural nature, his feelings and his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most

valued by civilized men. To protect that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed to be a violation of the Fourth Amendment."

The sanctity of the home is not an idea of recent origin. It has come down to us from ancient times, where freedom prevailed. Only in totalitarian governments is the home subject to invasion by officers of the government. It was Lord Chatham, the great Pitt, who said:

> "The poorest man may, in his cottage, bid defiance to all forces of the crown. It may be frail; its roof may leak; the wind may play through it; the storm may enter; but the King of England may not enter; all his force dares not cross the threshold of the ruined tenament."

Sir Edward Coke said: "The house of every man is to him his castle and fortress, as well for his defense against injury and violence as for his repose."

These principles, after the evils of the general writs of assistance became manifest, were crystalized and perpetuated in America into the Fourth Amendment of the Constitution. It recognized the inherent rights of the people "to be let alone in their homes" and spelled out in the Fourth Amendment the only manner in which the privacy of the home could be invaded by the officers of the government.

Harvard Law Review, Vol. 63, No. 2, page 349 (December 1949) in its note on this case, *District of Columbia* v. *Little*, 18 U. S. L. Week, 2076 (D. C. Cir. Aug. 1, 1949), says:

> "In fact recent applications of search-and-seizure restrictions to administrative proceedings which are primarily civil, though they involve possible penalties, have a tendency away from this narrow construction. See Note, 54 Harv. L. Rev. 1214 (1941). However, the right to be let alone is probably the fundamental principle involved in the Fourth Amendment, see Brandies, J., dissenting opinion in Olmstead v. United States

(277 U. S. 438, 448—1928); and thus it can matter little whether a policeman or health inspector intrudes. Cf. Davis v. United States, 328 U. S. 582, 587 (1946). Historically it was probably the abuses of the general warrant which led to the adoption of the Fourth Amendment, but the individualistic spirit of that age would have rebelled equally at noncriminal invasion of the home unknown in 1780 when government was simpler. Although a further distinction has been made between 'search' and 'investigation,' on the theory that a 'search' is looking for some particular object capable of seizure, while an 'investigation' means merely looking around, it seems the broader type of inquiry is even more dangerous to privacy and security. Sullivan v. Brawner, 237 Ky. 730, 36 S. W. 2d 364 (1931).

"Mass. Gen. Laws c. 111, sec. 131 (1932), requiring warrants for home health inspections unless immunity is waived, seems reasonable and in accordance with normal public health practice. Parker and Worthington, Public Health and safety 162 (1892). A satisfactory balance between the agencies of the modern social organizations and the demands of personal privacy would be achieved by casting around the home this protection, which has been denied more public places, where the danger of disease is greater and the intrusion less."

CONCLUSION.

This case was correctly decided by the United States Court of Appeals for the District of Columbia. The opinion of that Court is masterful in dealing with the issues presented. The legal theories of the case as discussed in the brief for petition are entirely beside the points properly before the Court on this appeal. The judgment of the Court of Appeals was correct, and should be affirmed.

JEFF BUSBY, and
JEFF BUSBY, JR.,
Attorneys for Respondent,
706 Washington Loan &
Trust Building,
900 F Street, N. W.,
Washington 4, D. C.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 302

DISTRICT OF COLUMBIA, *Petitioner*,

vs.

GERALDINE LITTLE, alias MILDRED PARKER,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT IN BEHALF OF THE MEMBER CITIES OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS AS AMICI CURIAE

JOHN P. MCGRATH,
Corporation Counsel, New York, New York.
RAY L. CHESEBRO,
City Attorney, Los Angeles, California.
BENJAMIN S. ADAMOWSKI,
Corporation Counsel, Chicago, Illinois.
ALEXANDER G. BROWN,
City Attorney, Portland, Oregon.
CHARLES S. RHYNE,
730 Jackson Place, N. W., Washington, D. C.

INDEX

TABLE OF AUTHORITIES

Cases

Other Authorities

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STATEMENT

The petition for certiorari in this case seeks review of a final judgment of the United States Court of Appeals for the District of Columbia Circuit in *District of Columbia* v. *Geraldine Little, Alias Mildred Parker*, —— Fed. (2d) ——, No. 10092 (1949), affirming the judgment of the Municipal Court of Appeals for the District of Columbia, holding an inspection of a private dwelling by a health officer without a warrant unconstitutional.

FACTS OF THE CASE

The case involves the constitutionality of an inspection of a private dwelling by a health inspector without first securing a search warrant.

On complaint, to the Health Department by an occupant of residential property belonging to Respondent that there was an accumulation of loose and uncovered garbage and trash in the halls of the premises, and that persons residing therein were not availing themselves of the toilet facilities, a uniformed inspector of the Health Department, accompanied by a uniformed member of the metropolitan police, went to the residence to inspect it. Respondent refused to allow the inspection and was arrested for hindering, obstructing and interfering with an inspector of the Health Department in the performance of his duty.

The Respondent was convicted in the trial court but on appeal to the Municipal Court of Appeals for the District of Columbia the conviction was reversed. The United States Court of Appeals for the District of Columbia affirmed, holding that this inspection of a private dwelling by a health inspector, without a warrant, was unconstitutional under the Fourth Amendment to the Constitution of the United States, and that a government official could not invade a private home unless a magistrate had authorized him to do so, or, an immediate crisis in the performance of duty afforded neither time nor opportunity to apply to a magistrate. Judge Holtzoff dissented, contending that the Fourth Amendment related only to criminal or quasi-criminal actions.

IMPORTANCE OF THE CONSTITUTIONAL ISSUE PRESENTED

The question of the constitutionality of inspections of private dwellings by health inspectors without search warrants is of vital importance to thousands of municipalities throughout the United States. This brief in support of the petition for certiorari herein is filed on behalf of the 529 member cities of the National Institute of Municipal Law Officers and the millions of local citizens resident therein.

Today the problems of health in our municipalities are being studied and regulated extensively. The primary effort is to prevent the spread of disease in both mind and body, while the secondary effort is to correct those conditions already in existence, which are spreading disease. The thousands of municipalities and their resident citizens are vitally interested in these preventive and corrective methods and in their ultimate purpose, which is to make each community a healthier place in which to live and raise families.

Prior to the decision of the Court of Appeals it was generally recognized that the police power was the power to prevent and anticipate dangers, not merely the institution of corrective measures after conditions have resulted in an emergency situation or a crisis has arisen.

The decision of the Court below in requiring all inspections of private dwellings for health purposes, unless there is an actual known emergency, to be premised on application to and receipt from a magistrate of a search warrant, has the practical result of completely destroying the preventive powers of the Health Department. First of all there is not, nor has there ever been provided, a search warrant such as is required by that Court, and secondly, if such warrant were provided by the Congress, in the overwhelming majority of instances it would be impossible for the health inspector to make any showing of probable cause, and therefore the warrant would not be issued.

It is respectfully submitted that the Court of Appeals fell into error in reaching the result it did. There has never been in the entire history of the common law or statutory law, a requirement of a search warrant for such a purpose, nor has the Fourth Amendment ever been held applicable to any actions other than those that were criminal or quasi-criminal in nature.

It is not to be denied that the fundamental purpose of the Fourth Amendment was to secure the privacy of the home. However, it is also not to be denied that under the police power there is interference, in many respects, with the liberty of individuals, their right to move around and their right to use their property. Individual freedom must yield to the enforcement of reasonable regulations for the public welfare. This interference with the individual and his rights has been justified because it has been recognized that it is necessary in order to protect the personal and property rights of others and to advance the best interests of society. It is respectfully submitted that it was never the intended purpose of the Fourth Amendment to govern health inspections and the Fourth Amendment should not be expanded to that point.

It is recognized that the Fourth Amendment to the Constitution of the United States is not applicable to the states; however, every state constitution contains a similar provision. In view of this and the circumstances created by this case, and since apparently this precise issue has never before been presented to any court, it is respectfully submitted that certiorari be granted to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

ARGUMENT

I. A Municipality May, in the Exercise of Its Police Power, Enforce Local Police, Sanitary and Other Regulations Designed to Promote the Health, Safety and Welfare of Its Citizens

It has consistently been held that one of the chief purposes of a municipal government is the conservation of the public health and that public authorities may employ all necessary means to protect the public health and as a result may provide for inspections of private dwellings as a health measure. 3 McQUILLIN, MUNICIPAL CORPORATIONS, Section 954 (1943).

It has been recognized that garbage accumulates rapidly and is a constant threat to the health of the public in general. *Dupont* v. *District of Columbia*, 20 App. D. C. 478 (1902). This Court said in *California Reduction Co.* v. *Sanitary Reduction Works*, 199 U. S. 306, at page 321:

> "It is the duty, primarily of a person on whose premises are garbage and refuse material to see to it, by proper diligence, that no nuisance arises therefrom which endangers the public health. The householder may be compelled to submit even to an inspection of his premises, at his own expense, and forbidden to keep them or allow them to be kept in such condition as to create disease."

It is evident that this Court has recognized that garbage is a menace to society and that under a reasonable exercise of the police power the owners of private dwellings are subject to having their dwellings inspected for the purpose of preventing the spread of disease.

A. THE POWER TO MAKE THE INSPECTION IN THIS CASE WAS A LAWFUL DELEGATION OF POWER BY THE CONGRESS OF THE UNITED STATES AND THE INSPECTION WAS A REASONABLE EXERCISE OF THIS POWER

The Constitution of the United States, Article I, Section 8, Clause 17, provides that Congress shall exercise exclusive

jurisdiction over the District of Columbia. Pursuant to this a joint resolution of Congress authorized the Commissioners of the District of Columbia to make and enforce reasonable and usual police regulations for the protection of the "lives, limbs, and health" of all persons within the District of Columbia. 27 Stat. 394, Res. No. 4, Sec. 2 (1892), Title 1-226, D. C. Code (1940).

By virtue of this authority the Commissioners passed Regulations Concerning the Use and Occupancy of Buildings and Grounds, providing that it is the duty of every person occupying premises in the District of Columbia to keep them in a clean and wholesome condition and if upon inspection they are not in such condition the occupant is to be so notified and is to place them in a clean and wholesome condition. It further provides that any person violating provisions of the regulations or interfering or preventing an authorized inspection is guilty of a misdemeanor. The Respondent was convicted of interfering and preventing an authorized inspection.

It is submitted that this attempted inspection was a reasonable exercise of the power granted. The Complaint to the Health Department was allegedly based upon personal knowledge, the attempted inspection was made by a uniformed inspector at a reasonable time of day, and the Respondent knew of the purpose of the visit.

II. An Inspection for Health Purposes Is Not a Search Within the Meaning of That Term in the Fourth Amendment

The word "search" has been defined as follows:

> "the term search as applied to search and seizures is an examination of a man's house or other buildings or premises with a view to the discovery of contraband or illicit or stolen property, or some evidence of guilt to be used in the prosecution of a criminal action for some crime or offense with which he is charged." 56 Corpus Juris Search and Seizure, Section 1.

In this case the inspector was not going to look for evidence of guilt to be used in the prosecution of any criminal action, but was merely intending to look at the conditions of the house from a health viewpoint. If the house was found to be clean and wholesome, nothing further would be done and if it was found to be unclean and unwholesome Respondent would have been notified, with time being given to correct the situation. The purpose of the inspection is not in any way criminal or quasi-criminal in nature.

III. Search Warrants Authorizing Health Inspections Are Not in Existence, Nor Have They Ever Been in Existence

Search warrants were not known to early common law. Originally they were exclusively used for the discovery of stolen property but have now been extended to searches for other criminal evidence. However, there is no existing statute under which a health inspector may obtain a warrant authorizing an inspection to determine whether premises are clean and wholesome.

A search warrant is generally defined as a warrant requiring the officer to whom it is addressed to search a house, or other place, therein specified, for stolen or other personal property, and bring it before a magistrate. 56 CORPUS JURIS SEARCH AND SEIZURE, Section 3; BOUVIER'S DICTIONARY.

Search warrants have generally been considered legal criminal process. The common law recognized them as having no relation to civil proc dings and therefore held them not to be available in those proceedings. 56 CORPUS JURIS SEARCH AND SEIZURE, Section 71. Furthermore, this Court has held that the primary purpose of a warrant is the detection of crime by obtaining evidence for criminal prosecutions but that the warrant could not be used as the sole means of securing that evidence. *Gouled* v. *U. S.*, 255 U. S. 298,

In view of the Court of Appeals' decision in requiring a warrant, when there is no emergency, since there is no such

warrant known to the law, it should be evident that the great preventive powers of the Health Department are destroyed, resulting in placing the public health, safety and welfare in great jeopardy. It is respectfully submitted that even if warrants were provided that many of the important preventive powers would remain inoperative. Many necessary inspections made by the Health Department are routine ones to determine whether health regulations are being observed. In none of these would the health inspector be able to show probable cause and therefore the warrants would not be issued.

In view of the fact that an inspection for health purposes is not a search within the meaning of that term in the Fourth Amendment and since there is no warrant known to law applicable to health inspections, it is respectfully submitted that the District of Columbia, through its Health Department, may provide for inspections of private dwellings in an effort to prevent the spread of disease, and that this is a reasonable exercise of the police power.

IV. The Fourth Amendment Applies Only to Criminal or Quasi-Criminal Actions

A. Cases Relied on by the Majority of the Court of Appeals Are Not Applicable in This Type of Case

The majority opinion in the Court of Appeals refused to hold that the Fourth Amendment related only to criminal or quasi-criminal cases, yet every case cited was a criminal case.

That Court in its footnote 5 cited *Agnello* v. *U. S.*, 269 U. S. 20, a criminal case concerning the sale of narcotics and introduction into evidence of incriminating articles discovered in an unlawful search. Also cited there were *Harris* v. *U. S.*, 331 U. S. 145; *Davis* v. *U. S.*, 328 U. S. 582; *Johnson* v. *U. S.*, 333 U. S. 10; *McDonald* v. *U. S.*, 17 U.S.L.W. 4045 (1948); *Wolf* v. *Colorado*, 17 U.S.L.W. 4638 (1948), all cases concerning criminal actions.

The Court of Appeals said,

> "to be certain we have stated the rule no broader than existing law, one has only to read the cases cited *supra* in footnote 5; indeed the opinions in *McDonald* v. *U. S.* alone are sufficient."

However, as stated above, the *McDonald* case involved a criminal action. It was held in that case that convictions of carrying on a lottery known as the numbers game should be reversed because the police officers, without a warrant, broke into a rooming house and seized certain evidence, thereby violating the Fourth Amendment.

It is respectfully submitted that the above decisions of this Court are not controlling, because here there is merely involved an administrative function of the Health Department, the attempt to prevent the spread of disease, having none of the criminal aspects of the above cases.

B. The Historical Background of the Fourth Amendment Plainly Indicates That It Was Intended to Cover Only Criminal and Quasi-Criminal Actions

The Fourth Amendment does not prohibit all searches but only those that are *unreasonable*, and to determine what is an unreasonable search and seizure it is necessary to determine what was considered unreasonable when the Fourth Amendment was adopted. *Carroll* v. *U. S.*, 267 U. S. 132; *Knowlton* v. *Moore*, 178 U. S. 41; *Harris* v. *U. S.*, 151 Fed. (2d) 837 (C.C.A. 10th).

It has generally been conceded that the case of *Entick* v. *Carrington*, 19 Howells' State Trials 1030 (1765) was the basis for the Fourth Amendment. That was the English case which condemned the use of general warrants and writs of assistance, empowering officers to enter private homes and intrude on the privacy of citizens, to seize private papers and property for the purpose of personal prosecution on any charges the Crown might choose to make. Indeed this Court has recognized the above case as explanatory of

what was meant by an unreasonable search and seizure. In commenting on this case, this Court has said,

> "As every American Statesman during our revolutionary and formative period as a nation, was undoubtedly familiar with this monument of freedom, and considered it as the true and ultimate expression of constitutional law, it may be confidently asserted that its propositions were in the minds of those who framed the Fourth Amendment to the Constitution and were considered as sufficiently explanatory of what was meant by unreasonable search and seizures." *Boyd* v. *U. S.*, 116 U. S. 616, at page 626.

As originally adopted and ratified by the States, the Constitution of the United States contained no "Bill of Rights." On the insistence of the states, Mr. James Madison presented them to the First Session of the First Congress on June 8, 1789 with the intent of placing the freedom of speech, press, religion, the security of property, personal liberty, trial by jury and other fundamental rights beyond the reach of the Government.

Very indicative of the framers' viewpoint, on the purpose of the now Fourth Amendment, is the manner and order in which it was first presented to Congress. Mr. Madison read the "Bill of Rights" for the first time to Congress partly in this order:

> "No person shall be subject, except in the cases of impeachment, to more than one punishment or trial for the same offence; nor shall be compelled to be a witness against himself; nor be deprived of life, liberty or property without due process of law; nor be obliged to relinquish his property, where it may be necessary for public use, without just compensation.
>
> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

"The rights of the people to be secured in their persons, their houses, their property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the person or things to be seized.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the cause and nature of the accusation, to be confronted with his accusers, and the witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense." Annals of Congress, First Session, 434 (1789).

When the Amendments were agreed to by the First Congress they were presented in the same order and the now Fourth Amendment was accepted with the only debate being on changing the word "secured" to "secure." Annals of Congress, *supra*, p. 753.

It is very important to note that the "unreasonable search and seizure" provision is not found with the provisions for "freedom of speech, press or religion," but was placed by Mr. Madison with the provisions of a criminal nature, directly between the provisions for "excessive bail" and the "right of an accused to a speedy trial." While not conclusive of the purpose intended it is submitted that this is very strong evidence that the framer intended this provision to apply only to criminal actions.

In view of the fact that the framer of the Fourth Amendment apparently intended it to cover only criminal actions, and the purpose of the Amendment was to prevent general warrants, which were used only for criminal prosecutions, and since there have never been any provisions for the type of warrants required by the Court of Appeals, it is respectfully submitted that it is shown, by historical background, that the Fourth Amendment was intended to apply only to criminal or quasi-criminal actions.

C. THIS COURT HAS RECOGNIZED THAT THE FOURTH AMENDMENT DOES NOT APPLY TO CIVIL ACTIONS

In the case of *Murray's Lessee* v. *Hoboken Land and Improvement Co.*, 18 How. 272, this Court speaking through Mr. Justice *Curtis* said at p. 285,

> "The remaining objection to this warrant is, that it was issued without support of an oath or affirmation, and so was forbidden by the fourth article of the Amendments to the Constitution. But this article has no reference to civil proceedings for the recovery of debts, of which a search warrant is not made part."

In the case of *Boyd* v. *U. S.*, *supra*, this Court after an excellent discussion of the historical background of the Fourth Amendment said at p. 633,

> "Reverting then to the peculiar phraseology of this act, and to the information in the present case, which is founded on it, we have to deal with an act which expressly excludes criminal proceedings from its operation (though embracing civil suits for penalties and forfeitures), and with an information not technically a criminal proceeding, and neither, therefore, within the literal terms of the Fifth Amendment to the Constitution any more than it is within the literal terms of the Fourth."

In discussing the relationship between the Fourth and Fifth Amendments, this Court said further at p. 633,

> "We have already noticed the intimate relationship between the two amendments. They throw great light on each other. For the 'unreasonable searches and seizures' condemned in the Fourth Amendment are almost always made for the purpose of compelling a man to give evidence against himself, which in criminal cases is condemned in the Fifth Amendment; and compelling a man 'in a criminal case to be a witness against himself,' which is condemned in the Fifth Amendment, throws light on the question as to what is an 'unreasonable search and seizure' within the Fourth Amendment.

> And we have been unable to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself. We think that it is within the clear intent and meaning of those terms. We are also of the opinion the proceedings instituted for the purpose of declaring the forfeiture of a man's property by reason of offences committed by him, though they may be civil in form, are in their nature criminal."

Again, this Court said at p. 634,

> "As therefore, suits for penalties and forfeitures incurred by the commission of offences against the law are of this quasi-criminal nature, we think they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment and that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself."

It should be apparent from the above that this Court has recognized that the Fourth Amendment is applicable only in criminal or quasi-criminal actions and that it has no application to civil actions.

D. There Are District Court Decisions Holding That the Fourth Amendment Is Not Applicable to Civil Actions

In the case of *In re Meador*, 16 Fed. Cas. 1294 (Case No. 9,375, N. D. Ga. 1869) in answer to argument that the Fourth Amendment did not allow an Internal Revenue Inspector to require persons to come before him and produce their books for his inspection, the court said at p. 1299:

> "But this is a civil proceeding, and in no wise does it partake of the character of a criminal prosecution; no offence is charged against the Meadors. Therefore, in this proceeding, the Fourth Amendment is not violated. Said Merrick, J., in pronouncing the judgment

> of the court in *Robinson* v. *Richardson*, 13 Gray 454: 'Search warrants were never recognized by the common law as processes which might be availed of by individuals in the course of civil proceedings . . . but their use was confined to cases of public prosecutions, instituted and pursued for the suppression of crime or the detection and punishment of criminals.' "

In the case of *In re Strause*, 23 Fed. Cas. 261 (Case No. 13,548, D. Nev. 1871) the court said at p. 261-262,

> "Upon the second ground that this requirement is an unreasonable search, it need only be remarked that the Fourth Amendment, supposed to be violated, like the Fifth referred to above, is applicable to criminal cases only."

In *U. S.* v. *Three Tons of Coal*, 28 Fed. Cas. 149 (Case No. 16,515, E. D. Wisc. 1875) the court held that a proceeding against a distillery for forfeiture under the revenue laws, was not a criminal proceeding within the meaning of the Fourth and Fifth Amendments.

In the case of *U. S.* v. *First National Bank of Mobile*, 295 Fed. 142 (S. D. Ala., 1924) the Court held that a bank having books and records necessary to ascertain the income returns of a taxpayer was not protected by the Fourth Amendment. The court said at p. 143:

> "Said bank refuses to testify and produce the books and contends that it is protected by the Fourth Amendment to the Constitution from so doing. As I understand the Fourth Amendment, it protects the parties to criminal prosecutions against unreasonable searches and seizure of their papers . . ."

In a case under the Food and Drug Act, *U. S.* v. *18 Cases of Tuna*, 5 Fed. (2d) 279 (W. D. Va. 1925) the court held that an attachment, not supported by oath or affirmation, in forfeiture proceedings, was constitutional, and that the Fourth Amendment did not apply to the issuance of a writ of attachment in forfeiture cases.

In *Camden County Beverage Co.* v. *Blair*, 46 Fed. (2d) 648 (D. N. J. 1930), a case where prohibition agents broke and entered the plant of complainant and seized certain evidence, the court held that this evidence was only to be used to revoke complainant's license, a thing strictly civil in nature, and therefore, was not within the Fourth and Fifth Amendments.

In a libel proceeding under the Food and Drug Act, *U. S.* v. *62 Packages, etc.*, 48 Fed. Supp. 878 (W. D. Wisc. 1943), the court said at page 884:

> "The Fourth Amendment to the United States Constitution does not apply to seizure process in civil actions. The sections of the Act here in question do not provide for unreasonable searches and seizures. This is a civil action as distinguished from a criminal action."

See also *U. S.* v. *75 Cases, etc.*, 146 Fed. (2d) 124 (C.C.A. 4th, 1944); *U. S.* v. *935 Cases, etc.*, 136 Fed. (2d) 523 (C.C.A. 6th, 1943).

From the cases cited above it is evident that the District courts confronted with this issue have consistently held the Fourth Amendment to be inapplicable in non-criminal proceedings.

E. In the Only State Court Decisions Found on This Subject, the Courts Held That Health Inspections Did Not Violate the State Constitutional Provisions Against Unreasonable Search and Seizures

In the case of *Hubbell* v. *Higgins*, 148 Iowa 36, 176 N. W. 914 (1910), the court held that it was not repugnant to the state constitutional provision against unreasonable search and seizures, to allow a health inspector to inspect a hotel,

without a warrant, to ascertain whether the hotel was in a clean and sanitary condition. The Court said, at p. 46:

> "The right of the legislature to provide for inspection of premises in the interest of public safety and welfare, may be provided for and carried on without the need of a search warrant."

In the only other state court decision found on this subject, *Safee* v. *City of Buffalo*, 204 App. Div. 561, 198 N. Y. S. 646 (1923), in answer to argument that the City of Buffalo's ordinance providing for inspections of all premises where a refreshment business was carried on, to determine whether laws and ordinances relating to the public health and safety were being complied with, the court stated:

> "It is urged that these provisions are in conflict with the search and seizure clause of the Bill of Rights. But that clause is designed to protect the individual in the sanctity of his home and the privacy of his books, papers and property, and has no application to reasonable rules and regulations adopted to protect public health, morals and welfare . . . Having in mind the end to be accomplished, it may not be said that those means are unreasonable."

CONCLUSION

In view of the importance of the constitutional issue presented here to thousands of municipalities vitally interested in the preventive aspect of correcting their health problems, it is respectfully submitted that the dissenting opinion of Judge *Holtzoff* in the Court of Appeals correctly states the applicable law in this case, and that the decision in this case should be reviewed and re-examined by this Court. The imperative character and national importance of this problem stresses the need for this Court's determination of the issue presented.

Respectfully submitted,

JOHN P. MCGRATH,
Corporation Counsel, New York, New York.

RAY L. CHESEBRO,
City Attorney, Los Angeles, California.

BENJAMIN S. ADAMOWSKI,
Corporation Counsel, Chicago, Illinois.

ALEXANDER G. BROWN,
City Attorney, Portland, Oregon.

CHARLES S. RHYNE,
730 Jackson Place, N. W., Washington, D. C.

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ANNE X. ALPERN,
City Solicitor, Pittsburgh, Pennsylvania.

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City Attorney, Los Angeles, California.

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The fundamental error in the case at bar arises from the failure of the court to recognize that sanitary inspections cannot be made from a court house. It is not a question of the inconvenience involved in procuring a warrant every time there is a complaint as to insanitary conditions. It is the fact that public health c nnot be protected merely by following up warrantable complaints. The major public health and safety programs in this country are grounded in the concept that it is through prevention of conditions which result in health and safety hazards, and not by the punishment of violators, that the public welfare is best protected.

The decision of the Court of Appeals in the case at bar destroys the system of preventive inspections and makes health officers mere process servers for the purpose of abating conditions which have already grown to the stature of public menace. This decision is of vital importance because effective health and safety administration is not based upon complaints but is the result of periodic scientific checks by trained inspectors to determine health and safety conditions. If these inspectors are to be stopped at the door, except in cases where probable cause can be established by sworn affidavits, the preventive health and safety programs based upon scientific checks will grind to a standstill in large cities throughout the country.

So great is the impact of this decision upon cities throughout the country that the National Institute of Municipal Law Officers, which is composed of the law officers of 550 major cities, felt impelled to present the problems to this court. It is the failure of the court below to comprehend the nature and gravity of the problem and the far-reaching implications of its decision that makes this seemingly minor case one of national importance.

The fact situation is not in dispute. A complaint was filed with the Health Department of the District of Columbia by an occupant of residential property belonging to one Geraldine Little, stating that there was an accumulation of loose and uncovered garbage and trash in the halls of the premises and that persons residing therein were not availing themselves of the toilet facilities. A uniformed inspector of the Health Department, accompanied by a uniformed member of the metropolitan police, went to the residence to inspect it. The owner refused to allow the inspection on the ground that the inspector could not enter her home without a warrant. She was arrested for hindering, obstructing and interfering with an inspector of the Health Department in the performance of his duty.

The owner was convicted in the trial court, but on appeal to the District Court of Appeals for the District of

Columbia the conviction was reversed. The United States Court of Appeals for the District of Columbia, in an opinion by Prettyman and Proctor, JJ., affirmed the decision of the Municipal Court of Appeals for the District of Columbia, holding that the inspection of a private dwelling by a health inspector without a warrant was unconstitutional under the Fourth Amendment to the Constitution of the United States. The Court held that the District of Columbia inspector could not invade a private home unless a magistrate had authorized him to do so upon sworn affidavits. Alexander Holtzoff, District Judge, dissented, contending that the Fourth Amendment related only to criminal or quasi criminal actions and had no application to health and safety inspections, which could be conducted without warrants.

The Fourth Amendment to the Constitution prohibits unreasonable searches and seizures in the following language:

> "The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Up until the instant case, the Fourth Amendment has been applied only to criminal prosecutions and proceedings of a quasi criminal nature for the enforcement of penalties. It has never been invoked to prevent reasonable inspections by health, safety and other municipal inspectors.

No provision for search warrants to implement the inspections by health and safety inspectors is made in the laws and ordinances which regulate the health and safety of cities throughout the country. The right of entry by an inspector at reasonable hours is either expressly provided for or is implicit in his duties. It has been taken for

granted in all parts of the country, from the inception of health and safety programs, that no search warrants are necessary for the purpose of routine inspections.

As Judge Holtzoff so clearly pointed out in the dissenting opinion in this case, the conclusion of the court that a warrant is necessary may require the suspension of most inspection services. Judge Holtzoff stated:

> "Specifically, there is no existing statute under which a health inspector, a plumbing inspector, or a building inspector may obtain a warrant authorizing him to enter a building for the purpose of a routine inspection. It has always been assumed that no search warrant is necessary. On the basis of the conclusion of the Court in this case, these officers may have to suspend their function of inspection until and unless the Congress passes an Act authorizing the issue of search warrants for this purpose. In the interim the District of Columbia may be confronted (fol. 44) with a serious situation.
>
> "Moreover, even if an Act providing for such search warrants should be placed upon the statute books, how can an inspector make a showing of probable cause as a basis for the issuance of a warrant for the purpose of an ordinary, routine examination? Regular periodic inspections are conducted for the purpose of making certain that laws relating to sanitation and safety are being observed. Such examinations are not confined to situations in which there is a suspicion that the law is being violated. It is necessary that periodic inspections be regularly made for the purpose of securing observance of the laws and regulations relating to the safety and health of the community."

The argument that the inspection involved in the case at bar was an infringement of the sanctity of the home guaranteed by the Fourth Amendment is clearly untenable.

No one doubts the validity of protecting the right of privacy. It is not a right, however, which is inviolate in modern living. There are assaults upon our privacy every day of our lives. The gas man who enters to read the meter, the water assessor who counts the faucets and checks leak-

ages, the plumber who inspects for contamination from waste,—these are all assaults upon our privacy which we accept as part of the price of living in a complex society. To say that we will accept those invasions, but can bar the entry of inspectors who "invade" for the purpose of protecting the public health and safety is to fail to balance the conflicting rights in accordance with their relative weight. Significantly, the entrance of the health inspector in the case at bar was for the protection of the home-owner as well as the rest of the community.

The modern "castle" is not only covered by a mortgage but is connected to a central water system, a sewage system, a garbage collection system. Can it be said that the meter-man may come in to check the amount of gas used and whether the gas is leaking but the municipal authorities may not come in for the purpose of determining the city's Hooper rating on sanitary standards?

The householder who buys a house in a city and pays taxes for the purpose of procuring essential municipal services, impliedly agrees to give such access as is necessary to keep these services at a proper level of efficiency. To say that a resident who endangers her health and the health of others may barricade herself behind the Fourth Amendment is to ignore wholly the constitutional right of other residents to lead lives free from avoidable hazards.

The logical extension of the Court's opinion would mean that inspection of the plumbing and electrical work in a home could only be done upon warrant, if the householder refused to allow admission. The checking of hot air furnaces to determine their safety and of coal furnaces to determine whether proper combustion is achieved so as to comply with smoke control laws, could not be done without a warrant, if the householder stood upon his constitutional rights. Warrants would be required to determine the source of sewage drainage and water leakage.

If the concept of a man's castle being impregnable is carried to its logical conclusion, the assessment officers would not be permitted inside to determine the value of

property but would be required to guess its value for taxing purposes. Infractions of the Zoning Law as to number of occupants in buildings could not be determined, since the man in his castle could refuse to allow the inspector to come in and see how many kitchen sinks and cooking stoves were crowded into an illegal space. The United States census takers are not only invading the privacy of the castle but ask very searching questions as to repairs made, purchases made, the age and income of occupants. They too could be stopped at the threshold as invading private rights.

In protecting nebulous private rights, important and immeasurable public benefits have been jettisoned by the Court in the case at bar.

Illustrative of the advancement in safety made through preventive inspection in private homes is the data assembled in connection with fire prevention programs. For every complaint that there is an accumulation of waste paper in a cellar which constitutes a fire hazard, there are thousands of instances where no complaint has been made and where inspectors have gone into the cellars of home after home and warned the householders to remove the accumulations of papers which might result in fires. It is this preventive program that has so drastically reduced the fire hazards in this country. It has been part of a scientific plan to educate the householder into avoiding catastrophes rather than concentrating municipal efforts upon extinguishing fires after they have occurred.

The same thing is true in connection with garbage, one of the greatest sources for the spread of disease in this country. If the health officers of all the cities of the country are to wait for the complaint of neighbors and then issue warrants predicated upon the information received, a staggering blow will have been dealt to the effective work that has thus far been done in curbing epidemics in this country. For every neighbor that complains, there are thousands who are unwilling to become involved in a back-door fight and who are unwilling to become litigants in or-

der to preserve the health of their community. There are others who are phlegmatic to the danger and still others who are joint offenders.

The control of garbage collection,—the establishment of proper methods for wrapping garbage, the requirement of covered receptacles and frequent collection,—is regarded as a primary concern of health officers all over the country. The annual cost to the City of Pittsburgh for garbage and rubbish collection is $2,600,000. The City of New York spends $41,700,000 a year for the same purpose; Baltimore, $2,203,000; Cincinnati, $1,242,000; Columbus, Ohio, $624,000. Speaking conservatively, approximately $400,000,000 is spent annually in urban centers for the collection and disposal of garbage and rubbish.

It is not just the zeal to render a convenient service that impels the cities to spend such enormous sums of money; it is because of the recognition of the fact that the control of garbage is the primary step in the control of certain very serious diseases. For example, the danger of typhus, where the infection results from the bite of insects borne by rats, is tremendously increased where the garbage sanitation is not adequately controlled.

The enormity of the problem, its direct relation to the health and welfare of the people, was never appreciated by the Court of Appeals. The Court envisaged cases where health inspectors would interfere with the privacy of women in their homes and come to take bacteria counts at dinnertime and interfere with the family television hour. No such instances are involved in this case, nor is it the practice of inspectors to harass and to act out of caprice. It is regrettable that the Court's imagination was not equally vivid as to the lurid effects of uncovered garbage and the epidemic possibilities from rats and flies living on garbage and filth.

Mr. Justice Frankfurter, speaking for this Court only last June, recognized the various forms of redress available against the searching officer when he said, in *Wolf*

v. Colorado, 338 U. S. 25, 30: "The jurisdictions which have rejected the *Weeks* doctrine have not left the right of privacy without other means of redress." This statement was supported by an impressive collection of cases and statutes vindicating the individual's right to be protected against *unreasonable* searches.

The rule of reasonableness which has been developed in cases passing upon due process laws is always a protection against the capricious action of government officials. It cannot be doubted that the extreme situations presented by the court below which might ensue from the inspection by health officials without warrants, could be relieved against if they transpired.

For the court to characterize a complaint on uncovered and loose garbage and the failure to use toilet facilities as "silly" is to evidence only too clearly the court's complete unfamiliarity with the operation of the public health program and unawareness as to how intimately it is tied up with the hazards of urban living.

The case of the open garbage can may not be as intriguing to students of constitutional law as a case involving freedom of speech and assembly, but the assemblage of germs can have an equally far-reaching impact. One germ, after thirty divisions, becomes one billion germs—a formidable armed enemy. We are not speaking fancifully, but realistically, when we refer to our health officers as our shock troops. To municipal officers, in constant touch with health and safety problems, it is impossible to shrug off the very real dangers that lurk in the everyday problems of sanitation.

The holding in *Wolf* v. *Colorado*, 338 U. S. 25, that the Fourth Amendment is encompassed within the concept of due process and is therefore applicable against the States, makes the question presented in this case of tremendous importance to urban municipalities. Mr. Justice Frankfurter stated, at 338 U. S. 27: "The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free so-

ciety. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause."

The established inspection procedures carried out by health and safety authorities in these municipalities would be threatened if the holding of the court below is sustained. As a consequence, local opposition would no doubt develop against the periodic inspections of health and safety conditions in private homes. And if Litigation ensues, the State courts, with the *Wolf* case and the case at bar before them, would have no choice but to strike down the regularly established inspection practices which are now followed.

We cannot urge too strongly the practical administrative obstacles to operating inspection systems through warrants. It just cannot be done that way. Getting a warrant would be entirely possible in a certain portion of the cases where complaints are received and the complainants are willing to sign affidavits or where a nuisance situation has reached the point where it can be seen and smelled.

Olfactory health control is no answer to the major health problems of this country. The violations that smell represent too small a portion of the whole. By the time putrefaction sets in, very valuable time has been lost and an emergency phase has set in. The whole public health program is predicated upon the basic principle that improper practices must be corrected and abated *before* they reach the state of nuisance and glaring danger. A situation is clearly out of bounds from the control point of view when it is so bad the adjoining neighbors can smell it and complain.

The language used by this Court in tackling the then formidable problem of zoning, as expressed in *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365, at 386-387, is significantly apt:

> "Building zone laws are of modern origin. They began in this country about twenty-five years ago. Un

til recent years, urban life was comparatively simple; but with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity and validity of which, as applied to existing conditions, are so apparent that they are not uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive.

"Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable. And in this there is no inconsistency, for while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise."

A brief covering the history of the Fourth Amendment and the court decisions relative to the legal problems involved in this case was filed in support of the Petition for a Writ of Certiorari herein. The legal authorities and arguments presented are not repeated but it is respectfully requested that this Honorable Court consider the arguments and authorities there presented as a part of this supplementary brief.

Conclusion.

In conclusion, it is earnestly submitted that it has been the vigilance of public health officers and their well-integrated programs that has saved this country from some of the epidemics, scourges and health menaces that would inevitably have occurred. To shackle health and safety officers would inevitably result in decimating these vital health and safety activities.

The construction placed upon the Fourth Amendment is a strained and unnatural construction when applied to the facts in the case at bar. Like Procustes, who placed his victims upon racks, stretching them if too short and lopping them off if too long, the Court below has taken the provision of the Amendment for the protection against crimes, stretched it beyond its reasonable scope and applied it to a fact situation where it has no proper application. The Constitutional Amendment, enacted to protect the people, is used as a springboard for immeasurable public detriment.

It is earnestly submitted that there has been no case before the Supreme Court since the famous *City of Euclid* zoning case which so vitally affects the health and safety of the millions of people living in metropolitan areas throughout the country. The decision of the Court below should be reversed.

Respectfully submitted,

ANNE X. ALPERN,
City Solicitor, Pittsburgh, Pennsylvania.

JOHN P. McGRATH,
Corporation Counsel, New York, New York.

RAY L. CHESEBRO,
City Attorney, Los Angeles, California.

BENJAMIN S. ADAMOWSKI,
Corporation Counsel, Chicago, Illinois.

ALEXANDER G. BROWN,
City Attorney, Portland, Oregon.

CHARLES S. RHYNE,
730 Jackson Place, N. W., Washington, D. C.